Jurisdictional Statement

81-503

No.

Office - Supreme Court, U.
FILED
SEP 8 1981
ALEXANDER L. STEVAS
CLERK

IN THE

Supreme Court of the United States

October Term, 1981

IRVING STOLBERG,

Appellant,

vs.

LAWRENCE J. DAVIDSON, *et als.*,

Appellees.

ON APPEAL FROM THE SUPERIOR COURT OF CONNECTICUT,
NEW HAVEN COUNTY AT NEW HAVEN

JURISDICTIONAL STATEMENT

LOUIS M. WINER
205 Church Street
P.O. Box 1966
New Haven, Connecticut 06509
Tel.: (203) 789-1796
Counsel for Appellant

QUESTIONS PRESENTED

1. Whether the State of Connecticut's constitutional provision, section 11 of article third, a "Resign-to-Serve" provision which as applied to appellant to require him to forfeit his position as a state college teacher with tenure on taking office as an elected state legislator without requisite justification and supporting findings, and involving excessive interference with First Amendment freedoms, is invalid as so applied as a restriction on political activity impermissible under the First and Fourteenth Amendments to the United States Constitution.

2. Whether the State of Connecticut's constitutional provision, section 11 of article third, is invalid as applied under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

3. Whether the State of Connecticut's constitutional provision, section 11 of article third, is invalid for vagueness and overbreadth under the First and Fourteenth Amendments to the United States Constitution.

INDEX

JURISDICTIONAL STATEMENT

	PAGE
Opinion Below	1
Jurisdiction	2
Constitutional and Statutory Provisions Involved	2
Questions Presented	3
Statement of the Case	4
How the Federal Questions Were Reviewed and Decided	6
The Federal Questions Are Substantial	6
A. Federal Review of State Classifications and Declarations of Interest	10
B. Requirement of Adequate Justification and Supporting Findings	12
C. Prohibition of Remedial Overbreadth	14
Conclusion	16

Appendix—

A. Decision of Connecticut Supreme Court	A-1 to A-23
B. Judgment	B-1 to B-5
C. Docket Entry re Final Judgment	C-1
D. Notice of Appeal and Proof of Filing and Service	D-1 to D-4
E. Connecticut General Statutes, Chapter 10, §§ 1-79 to 1-90	E-1 to E-15
F. Connecticut General Statutes, §§ 53a-146, 53a-147, 53a-148	F-1 to F-2
G. Connecticut General Statutes, §§ 10-109, 10-109a, 10-109b	G-1 to G-3
H. Connecticut Constitution of 1818, Article Tenth, § 4	H-1
I. Connecticut General Statutes, § 52-406	I-1
J. Connecticut Practice Book (1978), §§ 3133, 3134	J-1

CASES CITED

	PAGE
Blodgett v. *Silberman*, 277 U.S. 1, 72 L.Ed. 749, 48 S.Ct. 410 (1928)	2
Buckley v. *Valeo*, 424 U.S. 1, 46 L.Ed.2d 659,96 S.Ct. 612 (1976)	9
Bullock v. *Carter*, 405 U.S. 134, 31 L.Ed.2d 92, 92 S.Ct. 849 (1972)	9
Butz v. *Economou*, 438 U.S. 478, 17 L.Ed.2d 895, 98 S.Ct. 2894 (1978)	11
Chang v. *University of Rhode Island*, 118 R.I. 631, 375 A.2d 925 (1977)	10
Evans v. *Gore*, 253 U.S. 245, 64 L.Ed. 887, 40 S.Ct. 550 (1920)	11
Fashing v. *Moore*, 489 F.Supp. 471 (W.D. Tex. 1980), *aff'd*, 631 F.2d 731 (5th Cir. 1980), *prob. juris. noted sub nom. Clements* v. *Fashing*, (June 1, 1981, No. 80-1290, 49 U.S.L.W. 3893)	8
Humphrey's Executor v. *United States*, 295 U.S. 602, 79 L.Ed. 1611, 55 S.Ct. 869 (1935)	11
Lake Country Estates, Inc. v. *Tahoe Regional Planning Agency*, 440 U.S. 391, 59 L.Ed.2d 401, 99 S.Ct. 1171 (1979)	11
Landmark Communications, Inc. v. *Virginia*, 435 U.S. 829, 56 L.Ed.2d 1, 98 S.Ct. 1535 (1978)	10
Let's Help Florida v. *McCrary*, 621 F.2d 195 (5th Cir. 1980), *cert. docketed sub nom. Firestone v. Dade Voters For A Free Choice*, (December 8, 1980, No. 80-969, 49 U.S.L.W. 3625), *appeal docketed sub nom. Firestone v. Let's Help Florida*, (December 8, 1980, No. 80-970, 49 U.S.L.W. 3625)	8
Magill v. *Lynch*, 560 F.2d 22 (1st Cir. 1977), *cert. denied*, 434 U.S. 1063, 55 L.Ed.2d 763, 98 S.Ct. 1236.	7
Metromedia, Inc. v. *City of San Diego*, 49 U.S.L.W. 4925 (July 2, 1981)	12
Morial v. *Judiciary Commission*, 565 F.2d 295 (5th Cir. 1977) *(en banc), cert. denied*, 435 U.S. 1013, 56 L.Ed.2d 395, 98 S.Ct. 1887	7, 8

PAGE

Myers v. *United States*, 272 U.S. 52, 71 L.Ed. 160, 47 S.Ct. 21 (1926) 11

Nord v. *Guy*, 114 N.W.2d 395 (N.D. 1966) 10

O'Donoghue v. *United States*, 289 U.S. 516, 77 L.Ed. 1356, 53 S.Ct. 740 (1933) 11

Plante v. *Gonzalez*, 575 F.2d 1119 (5th Cir. 1978), *cert. denied*, 439 U.S. 1129, 59 L.Ed.2d 90, 99 S.Ct. 1047 8

Powell v. *McCormack*, 395 U.S. 486, 23 L.Ed.2d 491, 89 S.Ct. 1944 (1969) 9

PruneYard Shopping Center v. *Robins*, 447 U.S. 74, 64 L.Ed.2d 741, 100 S.Ct. 2035 (1980) 2

Schad v. *Borough of Mt. Ephraim*, U.S. , 68 L.Ed.2d 671, 101 S.Ct. 2176 (1981) 12

Stolberg v. *Members of the Board of Trustees*, 541 F.2d 890 (2d Cir. 1976), *cert. denied*, 429 U.S. 897, 50 L.Ed.2d 181, 97 S.Ct. 260 4

United States v. *Brown*, 381 U.S. 437, 14 L.Ed.2d 484, 85 S.Ct. 1707 (1965) 11

Village of Schaumburg v. *Citizens For A Better Environment*, 444 U.S. 620, 63 L.Ed.2d 73, 100 S.Ct. 826 (1980) 14

Wilson v. *Philadelphia School District*, 328 Pa. 225, 195 Atl. 90 (1937) 10

STATUTES CITED

Connecticut General Statutes, State Colleges Organic Act, §§ 10-109, 10-109a, 10-109b 13

Connecticut General Statutes, Code of Ethics for Public Officials, §§ 1-79 to 1-90 ..... 13, 15

Connecticut General Statutes, Connecticut Bribery Laws, §§ 53a-146, 53a-147, 53a-148 ..... 13, 15

OTHER AUTHORITIES

Connecticut Constitution of 1818, Article Tenth, Section 4 13

IN THE

Supreme Court of the United States

October Term, 1981

No.

IRVING STOLBERG,

Appellant,

vs.

LAWRENCE J. DAVIDSON, *et als.*,[1]

Appellees.

ON APPEAL FROM THE SUPERIOR COURT OF CONNECTICUT,
NEW HAVEN COUNTY AT NEW HAVEN

JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the Supreme Court of Connecticut, upon an amicable suit in the Superior Court in New Haven County, reserved to the Supreme Court upon an agreed statement of facts for its consideration and advice, is reported at 175 Conn. 586, 402 A.2d 763(1978). A copy is attached as Appendix A, pp. A-1 to A-23.

[1] Parties defendant in the proceeding below are Lawrence J. Davidson, Alvin B. Wood, Margaret Shapiro, Peter J. Berry, Rocco Colatrella, Patricia A. Geen, Luva M. Hoar, Ernest A. Johnson, Nancy W. Kaplan, Ellen W. Long, Antonio Marrero, Paul R. McDevitt, Niel James O'Neill, Seymour M. Smith, Betty L. Tianti, and Stephen Varga, members of the Board of Trustees for the State Colleges of the State of Connecticut, J. Edward Caldwell, Comptroller of the State of Connecticut, and Henry J. Becker, Jr., and Leo V. Donohue, auditors of public accounts of the State of Connecticut.

JURISDICTION

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(2), this being an appeal which questions the validity of article third, section 11, of the Connecticut constitution on the ground that it is repugnant to the Constitution of the United States. The Supreme Court of Connecticut upheld the validity of the provision.

The advisory opinion of the Supreme Court of Connecticut was released August 8, 1978, and judgment pursuant thereto was entered June 8, 1981, a copy of which is set forth in Appendix B, at pp. B-1 to B-5. The Notice of Appeal was filed with the Superior Court of the State of Connecticut, Judicial District of New Haven at New Haven, June 17, 1981, a copy of which is set forth in Appendix D, at pp. D-1 to D-4.

For jurisdictional purposes, the state constitutional provision here in question is a "statute" within the meaning of 28 U.S.C. § 1257(2). *PruneYard Shopping Center* v. *Robins,* 447 U.S. 74, 79-80, 64 L.Ed.2d 741, 751,100 S.Ct. 2035, 2039 (1980). Connecticut procedure and jurisdictional precedents in this Court recognize that the judgment in the Connecticut Superior Court rendered following advice to give full effect to that advice is the final judgment from which appeal to this Court lies. *Blodgett* v. *Silberman,* 277 U.S. 1, 6-7, 72 L.Ed. 749, 755-56, 48 S.Ct. 410, 412(1928). The Connecticut statute and rules of practice relating to agreed cases and reservations for advice of the Connecticut Supreme Court are set forth in Appendices I and J, at pp. I-1, J-1.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 11 of article third of the Connecticut constitution provides, in pertinent part:

> "Section 11. No member of the general assembly shall, during the term for which he is elected, hold

> or accept any appointive position or office in the judicial or executive department of the state government, or in the courts of the political subdivisions of the state, or in the government of any county. . . ."

The Fourteenth Amendment to the United States Constitution provides, in Section 1:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The First Amendment to the United States Constitution provides, in pertinent part:

> "Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Pertinent parts of the Connecticut General Statutes and a predecessor constitutional provision are set out at length in Appendices E (§§ 1-79 to 1-90, Code of Ethics for Public Officials), F (§§ 53a-146, 53a-147, 53a-148, Connecticut Bribery Laws), G (§§ 10-109, 10-109a, 10-109b), and H (Section 4, Article Tenth, Constitution of 1818).

QUESTIONS PRESENTED

1. Whether the State of Connecticut's constitutional provision, section 11 of article third, a "Resign-to-Serve" provision which as applied to appellant to require him to forfeit his position as a state college teacher with tenure on taking office as an elected state legislator without requisite justification and supporting findings, and involving excessive interference with First Amendment freedoms, is inva-

lid as so applied as a restriction on political activity impermissible under the First and Fourteenth Amendments to the United States Constitution.

2. Whether the State of Connecticut's constitutional provision, section 11 of article third, is invalid as applied under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

3. Whether the State of Connecticut's constitutional provision, section 11 of article third, is invalid for vagueness and overbreadth under the First and Fourteenth Amendments to the United States Constitution.

STATEMENT OF THE CASE

Plaintiff served as a member of the faculty and professional staff at Southern Connecticut State College during the academic years 1966-67 through 1968-69. He was dismissed at the end of the last year. He commenced a federal civil rights action seeking reinstatement with tenure and other relief. In March of 1972, the United States District Court for the District of Connecticut rendered judgment in that action ordering reinstatement with tenure. In the interim, plaintiff ran for and was elected to a seat in the House of Representatives of the General Assembly, representing the 93rd Assembly District. He has been reelected in each subsequent biennial election.

Plaintiff was reinstated pursuant to the District Court judgment in the federal civil rights action at the beginning of the 1974-75 academic year, but his salary payments were discontinued in November of 1974 under the claim that his service at the State College, while serving as a state legislator violated the provisions of Section 11 of Article Third of the Connecticut Constitution.[2] Plaintiff commenced an

[2] Plaintiff sought unsuccessfully to protect his position on grounds of *res judicata* arising out of the federal civil rights action previously litigated. *Stolberg* v. *Members of the Board of Trustees*, 541 F.2d 890 (2d Cir. 1976)

amicable suit and a mandamus action seeking determinations of several specific questions which were reserved to the Supreme Court. (175 Conn. at 591-592, n. 1. pp., A-4 to A-5.) The questions reserved to the Connecticut Supreme Court included the state questions whether a state college faculty member was within the judicial, legislative, or executive department of the State Government for purposes of the constitutional provision, and further questions whether, if barred by that section of the constitution and its effect, the application was invalid under the First Amendment, the Equal Protection Clause, and the Due Process Clause. The Connecticut Supreme Court reached the federal questions and upheld the state constitutional provision in the face of the challenge on federal grounds, leading to this appeal.[3]

Thus, the Connecticut Supreme Court, having interpreted section 11 of article third of the Connecticut constitution to bar plaintiff from holding his position as a state college faculty member while serving as a legislator, leaves the questions whether that restriction is an invalid restraint upon protected First Amendment activities and whether the restriction is invalid under the Equal Protection Clause because other members of professions or occupations are free to serve as legislators with no such severe impediment to the pursuit of their livelihoods or their professional or occupational interests.

(Mansfield, J., dissenting), *cert. denied*, 429 U.S. 897, 50 L.Ed.2d 181, 97 S.Ct. 260.

[3] A statute, Section 2-5 of the Connecticut General Statutes, prohibits appointment of one already a state legislator to a position in the executive, legislative, or judicial department of the state government (evidently to avoid the use of a legislator's influence to gain such an appointment), but because appellant was a state college teacher first, the Connecticut Supreme Court found the statutory provision inapplicable. 175 Conn. at 593-94, p. A-6.

HOW THE FEDERAL QUESTIONS WERE RAISED AND DECIDED

Plaintiff brought, in the Connecticut Superior Court, both an "agreed case", pursuant to Section 52-406 of the Connecticut General Statutes, and a mandamus action, which were consolidated. In the agreed case, he raised both state and federal questions. If the state questions were determined so that the constitutional provision did not apply to disqualify him to serve as a state college faculty member while also a legislator, the matter would have been at rest. However, he also sought determination of federal questions whether, if the state provisions did so disqualify him, those provisions violated plaintiff's rights under the First Amendment, the Equal Protection Clause, and the Due Process Clause, of the United States Constitution. (Complaint, Prayer for Relief, ¶4, as amended.) The parties stipulated to reserve the case to the Supreme Court upon agreed questions set forth in the Supreme Court's opinion. 175 Conn. at 591, n.l., pp. A-4 to A-5. Those questions included and preserved the federal questions here at issue. The answers to the reserved questions are set forth in the opinion. As stated in the judgment below, the Supreme Court disqualified plaintiff as a state faculty member and, at the same time, denied that such application of the state constitutional provisions constituted any violation of the federal constitutional rights to which plaintiff made claim.

The portion of the opinion below that shows that the claims raised here were raised and rejected below is Part IV, 175 Conn., at 607-612, pp. A-18 to A-22.

THE FEDERAL QUESTIONS ARE SUBSTANTIAL

Appellant had served as a state college teacher, achieving tenure and accumulated seniority, and he ran successfully for the state legislature. Thereafter, he was forced to resign his professional and occupational position by the

Connecticut Supreme Court's interpretation of a constitutional "Resign-to-Serve" restriction. That restriction forbade a general assembly member, during his term, to hold or accept an appointive position or office "in the judicial or executive department of the state government", and the Connecticut Supreme Court found a state college teacher to be within the "executive department" and asserted the prohibition rested on the separation-of-powers doctrine. Section 11, article third, of the Connecticut constitution, quoted at pp. 2-3, above; 175 Conn., at 595-598, pp. A-7 to A-10.

Such a "Resign-to-Serve" restriction is one of a group of limitations on voter-candidate-officeholder activities subject to increasing scrutiny. These restrictions include campaign finance laws, financial disclosure laws for candidates and officeholders, and, in particular, "Resign-to-Run" laws which prohibit an officeholder from announcing candidacy or being a candidate for another office without resigning the first, "disabling" laws which forbid an officeholder to be a candidate for another office, resign or not, and "Resign-to-Serve" laws such as involved here. In Connecticut, as elsewhere, few state legislators do not pursue a separate occupation or profession.

These laws and constitutional provisions restrict First Amendment freedoms. This Court has developed standards to test such restrictions, and the restrictions do not pass constitutional muster. They are an invalid fetter on activities protected by the First Amendment: seeking and holding state legislative office.

Restrictions of this sort are increasingly the subject of litigation, with review sought or pending in this Court. *Magill* v. *Lynch,* 560 F.2d 22 (1st Cir. 1977), *cert. denied,* 434 U.S. 1063, 55 L.Ed.2d 763, 98 S.Ct. 1236. ("Resign-to-Run" provisions of municipal charter upheld.) *Morial* v. *Judiciary Commission,* 565 F.2d 295, 300-301 (5th Cir. 1977) (*en banc*), *cert. denied,* 435 U.S. 1013, 56 L.Ed.2d 395, 98 S.Ct.

1887. ("Resign-to-Run" statute and canon of judicial ethics upheld with statement of standard that restrictions are "constitutionally permissible if justified by reasonable necessity . . . to burden those activities to achieve a compelling public objective.") *Plante* v. *Gonzalez,* 575 F.2d 1119 (5th Cir. 1978), *cert. denied,* 439 U.S. 1129, 59 L.Ed.2d 90, 99 S.Ct. 1047. (Financial disclosure or "sunshine" laws upheld, with reference to extensive background of prosecution for and publicity about corruption. 575 F.2d at 1122, n. 3.) *Let's Help Florida* v. *McCrary,* 621 F.2d 195 (5th Cir. 1980), *cert. docketed sub nom. Firestone* v. *Dade Voters For A Free Choice,* (December 8, 1980, No. 80-969, 49 U.S.L.W. 3625), *appeal docketed sub nom. Firestone* v. *Let's Help Florida,* (December 8, 1980, No. 80-970, 49 U.S.L.W. 3625). (Injunction against enforcement of statutory campaign contribution restrictions affirmed.) *Fashing* v. *Moore,* 489 F.Supp. 471 (W.D.Tex. 1980), *aff'd,* 631 F.2d 731 (5th Cir. 1980), *prob. juris. noted sub nom. Clements* v. *Fashing,* (June 1, 1981, No. 80-1290, 49 U.S.L.W. 3893). (Enforcement of "Resign-to-Run" and disabling provisions of Texas constitution enjoined on grounds of impermissible abridgement of rights under First and Fourteenth Amendments and invalid classifications.) Circuit Judge Fay, in his dissent in *Morial* v. *Judiciary Commission,* 565 F.2d, at 308, stated that that court had seldom been presented with issues "more complex and important . . . ." Plainly, invalid restrictions that fall upon individuals seeking to run for or hold office are substantial fetters on the free exercise of First Amendment rights. So, also, are restrictions which may be valid in part but which have an impermissible suppressive effect beyond that because they are vague, because they reach too far, and because the burden and risk of challenge is too great.

The First Amendment clearly protects the integrated cluster of rights surrounding voter-candidate-officeholder

activities against state and federal restrictions. The protection is not absolute but depends on careful evaluation and balancing of the competing interests involved. Rights of voters and candidates "do not lend themselves to neat separation. . . ." The impact of restrictions on the officeholder who is a successful candidate bears on rights similarly commingled. Such restrictions must be subjected to close scrutiny and "found reasonably necessary to the accomplishment of legitimate state objectives in order to pass constitutional muster." *Buckley* v. *Valeo,* 424 U.S. 1, 46 L.Ed.2d 659, 96 S.Ct. 612 (1976); *Bullock* v. *Carter,* 405 U.S. 134, 142-144, 31 L.Ed.2d 92, 99-100, 92 S.Ct. 849, 855-856 (1972); *Powell* v. *McCormack,* 395 U.S. 486, 23 L.Ed.2d 491, 89 S.Ct. 1944 (1969).

Bullock v. *Carter* announced the above standard of close scrutiny in the context of filing fee requirements for party primary elections and in the light of findings that the scheme had a "real and appreciable impact" on the exercise of the franchise related to resources of voters supporting a particular candidate; the state having failed to establish the requisite justification for the filing-fee system, this Court held the result to be a denial of equal protection of the laws. 405 U.S., at 144, 149, 31 L.Ed.2d, at 100, 103, 92 S.Ct., at 856, 859.

Since then, this Court has articulated the elements of analysis for "requisite justification" of state restrictions on the exercise of First Amendment rights in other areas. They apparently apply here. They show the decision below as to federal constitutional rights cannot be supported. They show it falls on both First Amendment and Equal Protection grounds. We take up these elements in order.

A. Federal Review of State Classifications and Declarations of Interest.

The balance of competing state and federal interests to be drawn in determining what is a permissible restriction of federally protected activity is for the courts. To permit a legislative enactment, a legislative finding, or a state determination of paramount interest, to preclude federal review would be to foreclose federal review of federal rights. *Landmark Communications, Inc.* v. *Virginia,* 435 U.S. 829, 844, 56 L.Ed.2d 1, 13-14, 98 S.Ct. 1535, 1544 (1978).

For state purposes, this Court cannot review the Connecticut determination that a state college faculty member is in the state government's "executive department". For federal purposes, however, that process of organizational line-drawing cannot be conclusive. The question is whether the State's interests under the separation-of-powers doctrine *and evaluated in the light of the functions and powers of a state college teacher* outweigh rights under the First and Fourteenth Amendments to serve as a state legislator without losing one's professional position and livelihood.

There is no uniformity of state decisions. In Rhode Island, state institutions of higher education are under the legislature and governed by the board of regents, not the governor. *Chang* v. *University of Rhode Island,* 118 R.I. 631, 639, 375 A.2d 925, 929 (1977). In North Dakota, the powers of the state board governing such institutions "are administrative". *Nord* v. *Guy,* 114 N.W.2d 395, 402 (N.D. 1966). Pennsylvania held its public school system to be a state institution possessing only "administrative powers." *Wilson* v. *Philadelphia School District,* 328 Pa. 225, 231, 195 Atl. 90, 94 (1937). If these organizational determinations were conclusive, federal rights would vary from state to state.

The functions of a teacher and scholar, advancing knowledge and accumulating, preserving, and transmitting it,

involve no powers to which the separation-of-powers doctrine applies. The suggestion that combining the powers of a state legislator and a state-employed college porfessor in one person would have the pernicious tendency toward tyranny and autocracy against which the doctrine is designed to serve as a bulwark, *United States* v. *Brown,* 381 U.S. 437, 442-444, 14 L.Ed.2d 484, 488-489, 85 S.Ct. 1707, 1712 (1965), *Myers* v. *United States,* 272 U.S. 52, 293, 71 L.Ed. 160, 242-243, 47 S.Ct. 21 (1926), is at best fanciful.

Connecticut apparently continues to view all government as divided into three parts. The opinion below cites *Evans* v. *Gore,* 253 U.S. 245, 64 L.Ed. 887, 40 S.Ct. 550 (1920); and *O'Donoghue* v. *United States,* 289 U.S. 516, 77 L.Ed. 1356, 53 S.Ct. 740 (1933); for that position, although the vitality of that doctrine, from the federal point of view, was soon sapped by *Humphrey's Executor* v. *United States,* 295 U.S. 602, 628, 79 L.Ed. 1611, 1619, 55 S.Ct. 869, 874 (1935), viewing the Federal Trade Commission as "an administrative body" and not "an arm or an eye of the executive." Connecticut's adherence to the Procrustean principle of forcing each state employee into one of three slots should not preclude examination of what actual state interest is served by the restriction applied against appellant and whether it is adequate to support restriction of the federal rights involved.

In the context of state-created and federal agencies, and in the application of federal rights and immunities, the courts are to conduct a functional analysis of the capacity in which the occupant of a particular position is acting, whether administrative, executive, legislative, or judicial. *Lake Country Estates, Inc.* v. *Tahoe Regional Planning Agency,* 440 U.S. 391, 402-406, 59 L.Ed.2d 401, 411-413, 99 S.Ct. 1171, 1178-1179 (1979); *Butz* v. *Economou,* 438 U.S. 478, 508-517, 17 L.Ed.2d 895, 917-923, 98 S.Ct. 2894, 2911-2916 (1978).

B. Requirement of Adequate Justification and Supporting Findings.

In the process of determining whether the state interest relied on to support the restriction of the exercise of the federal right is sufficiently strong, this Court has come in recent decisions to require adequate justification for any substantial restriction on a protected activity and evidence or supporting findings in the particular circumstances that the restriction of federally protected activities actually furthers the claimed state interest. In the concurring opinion in *Metromedia, Inc.* v. *City of San Diego,* 49 U.S.L.W. 4925, 4935(July 2, 1981) (Brennan and Blackmun, JJ., concurring) it was stated that the municipality "failed to provide adequate justification for it substantial restriction on protected activity" and that legal conclusions in other cases were not an "adequate substitute for evidence *in this case*" that the restriction furthers the state interest. (Emphasis in original.) In *Schad* v. *Borough of Mt. Ephraim,* U.S. , 68 L.Ed.2d 671, 684-685, 101 S.Ct. 2176, 2186(1981), the requirement of supporting findings is even more clearly stated.

In this case, the Connecticut Supreme Court simply made the naked assertion that, "The state's interest in enforcing the separation of powers provision of article second of our constitution is, by itself, such a compelling and significant governmental interest. . . . " 175 Conn., at 609, pp. A-19 to A-20. There was no analysis of the powers held and the functions served by appellant as a legislator and as a teacher, nor was there any discussion at all of the manner in which the separation-of-powers doctrine would be served by forbidding the holding of both positions by one person, much less findings that the restriction would further the interest. The Supreme Court of Connecticut expressly withdrew any suggestion of actual abuse or improper motive. 175 Conn., at 604, p. A-15. It referred to hypothetical prophylaxis against possible abuse without identifying

a single specific instance of possible abuse. Such an *ipse dixit* should not support substantial restrictions of important First Amendment freedoms.

We are not speaking of a person who serves in a central or traditional executive role. The separate and independent status of the institutions of higher education in which appellant served as a teacher was emphasized in the opinion below. 175 Conn., at 602-603, pp. A-13 to A-14. The governing trustees are appointed by the governor, but in staggered terms so that the possibility of political control is remote. Sections 10-109, 10-109a, 10-109b, Connecticut General Statutes, Appendix G, pp. G-1 to G-3.

The central legislative, executive, and judicial positions as to which holding of offices in two departments was barred, were set out in very limited terms in section 4 of article tenth of the Connecticut constitution of 1818, which remained until 1955. Appendix H. No legislative findings were made in 1955, and none are reported in the opinion below, as to any reason that the new and expanded prohibition was needed or appropriate.

Neither are we dealing here with officials out of the public eye. As a state legislator, appellant is the subject of intense media scrutiny; he is subject to financial disclosure laws, Section 1-83, Connecticut General Statutes, Appendix E, pp. E-8 to E-9; he is subject to laws penalizing bribery, Sections 53a-146, 53a-147, 53a-148, Connecticut General Statutes, Appendix F, pp. F-1 to F-2; he is subject to a comprehensive general Code of Ethics for Public Officials, Sections 1-79 to 1-90, Connecticut General Statutes, Appendix E, pp. E-1 to E-15; and he is subject to the powerful and cleansing exposure of today's brand of intense political competition.

In fact, section 1-85 of the Connecticut General Statutes, p. E-13, expressly declares that a public official does not have an interest in substantial conflict with the proper discharge of this duties and responsibilities if "any benefit

or detriment accrues to him as a member of a business, profession, occupation or group to no greater extent than any other member of such business, profession, occupation, or group." Thus, actions to advance his professional or occupational constituency are expressly countenanced.

The Connecticut Supreme Court, in its opinion below, addresses none of these factors, all present in this case, which tend strongly to reduce or eliminate the need for the harsh restriction here involved, the complete bar to continuance of professional position and related livelihood required on taking a legislative seat.

C. Prohibition of Remedial Overbreadth

In *Village of Schaumburg* v. *Citizens For A Better Environment,* 444 U.S. 620, 637-639, 63 L.Ed.2d 73, 87-88, 100 S.Ct. 826, 836-837 (1980), this Court struck down as unconstitutionally overbroad under the First Amendment an ordinance prohibiting charitable solicitations by organizations that did not use at least seventy-five percent or receipts for charitable purposes. The Court stated:

> ". . . The Village may serve its legitimate interests, but it must do so by narrowly drawn regulations designed to serve those interests without unnecessarily interfering with First Amendment freedoms. *Hynes* v. *Mayor of Oradell,* 425 U.S., at 620, 48 L.Ed. 2d, at 243, 96 S.Ct. at 1755; *First National Bank of Boston* v. *Bellotti,* 435 U.S. 765, 786, 55 L.Ed. 2d 707, 98 S.Ct. 3126 (1978). 'Broad prophylactic rules in the area of free expression are suspect. Precision of regulation must be the touchstone . . .' *NAACP* v. *Button,* 371 U.S. 415, 438, 9 L.Ed. 2d 405, 83 S.Ct. 328 (1963) (citations omitted).
>
> "The Village's legitimate interest in preventing fraud can be better served by measures less intrusive than a direct prohibition on solicitation. Fraudulent misrepresentations can be prohibited and the penal laws used to punish such conduct directly. *Schneider* v. *State,* 308 U.S. at 164, 84 L.Ed. 155, 60

> S.Ct. 900, 128 A.L.R. 1352; *Virginia Pharmacy Board* v. *Virginia Consumer Council,* 425 U.S., at 771, 48 L.Ed. 2d 346, 96 S.Ct. 1817 . . ." [Footnote omitted.]

Here, also, we have an overbroad prophylactic rule: professional debarment against a broad class of persons who happen to be employed by the state, persons such as scientists at an agricultural experiment station, physicians employed at a state-operated medical facility, or state college teachers. No matter how peripheral the position may be to the exercise of governmental powers or authority, none may serve in the legislature, or have another member of that class serve, without loss of occupational or professional position and seniority.

Connecticut's Code of Ethics for Public Officials, with penal provisions in Section 1-89, Appendix E, pp. E-1 to E-15, and its bribery laws, Appendix F, pp. F-1 to F-2, are precisely the narrower provisions, very much less destructive of First Amendment freedoms, that are not only possible as a "less intrusive" alternative and an effective specific guard against the vice, they are now in effect. Their existence on the statute books belies any necessity for the harsher prohibition.

CONCLUSION

The foregoing shows the burgeoning litigation, beginning to reach this Court, involving important First Amendment questions that bear substantially on those who seek or hold public office. Developing First Amendment principles for the review of state restrictions upon such activity can now be adapted to this specific area in the light of recent cases in other First Amendment-state restriction areas. Current case law here is confusing and in conflict, effecting a separate burden on this area of protected activity, and the outlines to clear this confusion and conflict are set out above.

For the foregoing reasons it is respectfully requested that probable jurisdiction be noted.

Respectfully submitted,

LOUIS M. WINER

Louis M. Winer
WINER & SULZBACH
205 Church Street
P.O. Box 1966
New Haven, Connecticut 06509
(203) 789-1796
Counsel for Appellant

APPENDICES

APPENDIX A

SUPREME COURT
OF THE
STATE OF CONNECTICUT

No. 8960

IRVING STOLBERG

vs.

LAWRENCE J. DAVIDSON, *et als.*

(Decision released August 8, 1978) [175 Conn. 586, 402 A.2d 763]

[587] Action of mandamus to require the defendants to make prompt payment to the plaintiff of his teaching salary, consolidated with an amicable suit to determine the legal duties of the parties, brought [588] to the Superior Court in New Haven County and reserved by that court, *Aaronson, J.,* upon an agreed statement of facts for the consideration and advice of this court.

COTTER, C. J. These cases were consolidated and come to the Supreme Court upon a reservation of facts and questions of law pursuant to § 52-406 of the General Statutes as an agreed case in which the parties agree upon the facts on which the controversy depends and submit the same to this court. The plaintiff has been and continues to serve as a member of the faculty and professional staff at Southern Connecticut State College. In the fall of 1970, he was elected a member of the House of Representatives of the General Assembly and has been reelected in each subsequent biennial election.

The defendant in the first action is the comptroller of the state of Connecticut. In the second action, the defendants are the chairman of the board of trustees for the state

colleges of the state of Connecticut, the members of the board of trustees of such colleges, the state comptroller, and the auditors of public accounts of the state of Connecticut.

Pursuant to the statute the parties have submitted, inter alia, the following facts upon which the controversy depends: The plaintiff served as [589] a member of the faculty and professional staff at Southern Connecticut State College (Southern Connecticut) during the academic years 1966-1967 through 1968-1969, inclusive. Effective at the end of the academic year 1968-1969, he was dismissed from his position at Southern Connecticut and during the academic years 1969-1970 through 1973-1974, inclusive, he served as a member of the faculty at Quinnipiac College in Hamden. In 1969, he commenced a federal civil rights action seeking reinstatement with tenure and other relief, claiming that the termination of his position at Southern Connecticut was violative of his rights under the first and fourteenth amendments of the United States constitution. In the fall of 1970, the plaintiff ran for and was elected to a seat in the House of Representatives of the General Assembly, representing the 93rd assembly district. He has been reelected to that seat in each subsequent biennial election and has held that seat pursuant to such election.

In March of 1972, the United States District Court for the district of Connecticut rendered judgment in the federal civil rights action referred to above, ordering that the board of trustees for the state colleges of the state of Connecticut (board of trustees) reinstate the plaintiff with tenure. Pursuant to that judgment, he was reinstated by the board of trustees, and at the commencement of the 1974-1975 academic year he returned to his faculty position at Southern Connecitcut with tenure, as provided for under the rules and regulations adopted and promulgated by the board of trustees. He has served and continues to serve in that position. He was paid for his faculty services through part of November, 1974, at which time salary payments

were discontinued, although the board of [590] trustees continued to maintain his position at Southern Connecticut and to submit his name regularly on the biweekly certified payrolls for Southern Connecticut. Each of these payrolls certified that "[a]ll employees listed herein have been regularly appointed to authorized positions and have rendered the services for which payment is to be made."

The plaintiff has rendered his services with the intention and expectation that he would receive salary payments therefor. He claims that he is entitled to such payments, and he has made demand for them. The defendant comptroller of the state of Connecticut and his predecessor in office have withheld and refused to deliver the plaintiff's faculty salary payments since November of 1974, solely upon the assertion that Southern Connecticut is within the executive department of state government; that the plaintiff's simultaneous service as a member of the General Assembly and as a member of the faculty and professional staff of Southern Connecticut is therefore violative of § 11 of article third of the constitution of the state of Connecticut and § 2-5 of the General Statutes; and that the plaintiff has therefore impliedly relinquished his faculty position.

The plaintiff has framed the issues as presented in his brief as follows: that Connecticut's state colleges are independent and autonomous state institutions, the faculties and professional staffs of which are not within the judicial, legislative, or executive department of the state government, and consequently neither the constitutional nor the statutory dual-job ban applies; that if his faculty position is in any of the three constitutional departments, it is [591] in the legislative department, and, in the circumstances of this case, he is not violating either ban; that he has not impliedly relinquished his state college faculty position; that the dual-job bans are constitutionally invalid because (a) they do not survive applicable strict equal protection scrutiny; (b) they are void for vagueness; and (c) they do

not survive applicable first amendment overbreadth scrutiny; and that Connecticut's comptroller is under a ministerial duty to pay the plaintiff's state college faculty salary.[1]

---

[1] The specific questions, as renumbered by this court, upon which advice is desired are:

1. Is the plaintiff's position as a member of the faculty and professional staff of Southern Connecticut State College:

(a) within the judicial department for purposes of the application of section 11 of article third of the constitution of the state of Connecticut;

(b) within the judicial department for purposes of the application of section 2-5 of the General Statutes;

(c) within the legislative department for purposes of the application of section 11 of article third of the constitution of the state of Connecticut;

(d) within the legislative department for purposes of the application of section 2-5 of the General Statutes;

(e) within the executive department for purposes of the application of section 11 of article third of the constitution of the state of Connecticut;

(f) within the executive department for purposes of the application of section 2-5 of the General Statutes?

2. (a) If the answer to question 1 (c) above is yes, may the plaintiff continue to serve as a member of the faculty and professional staff of Southern Connecticut without violating section 11 of article third of the constitution of the state of Connecticut, because said section does not bar the plaintiff from holding or accepting a position or office in the legislative department during the term for which he is elected of the General Assembly?

(b) If the answer to questions 1 (b), 1 (d), or 1 (f) above is yes, may the plaintiff continue to serve as a member of the faculty and professional staff of Southern Connecticut without violating section 2-5 of the General Statutes, because said section does not bar the plaintiff from simultaneously holding a position in the judicial, legislative, or executive department of the state government and a seat in the General Assembly, if he was elected to the General Assembly and took his seat there while holding the former position?

3. Can the plaintiff's position as a member of the faculty and professional staff of Southern Connecticut be impliedly relinquished by the plaintiff's becoming a member of the General Assembly?

4. If the answer to question 3 above is yes, and if the plaintiff is in violation of section 11 of article third of the constitution of the state of Connecticut and/or section 2-5 of the General Statutes, does the plaintiff nonetheless continue to maintain his position as a member of the faculty and professional staff of Southern Connecticut because the doctrine of implied relinquishment of office operates to cause the plaintiff to relinquish his seat in the General Assembly each time he returns to his position at Southern Connecticut after the commencement of each term for which he was elected to the General Assembly?

5. If the answer to question 4 above is no, are section 11 of article third of the constitution of the state of Connecticut and/or section 2-5 of the General Statutes, as applied to the plaintiff in the circumstances

[592] I

Article third, § 11 of the Connecticut constitution, which prohibits a legislator from holding an appointive position in the executive or judicial departments of state government, provides in [593] pertinent part: "No member of the general assembly shall, during the term for which he is elected, hold or accept any appointive position or office in the judicial or executive department of the state government, or in the courts of the political subdivisions of the state, or in the government of any county."[2] The statutory dual-job ban, General Statutes § 2-5, provides: "No member of the general assembly shall, during the term for which he is elected, be nominated, appointed or elected by the governor, the general assembly or any other appointing authority of this state to any position in the judicial, legislative or executive department of the state government, except as provided in this section. The provisions of this section shall not apply where it is expressly provided by law that a member of the general assembly as such shall be nominated

herein, overbroad and violative of the plaintiff's rights under the equal protection clause of the United States constitution and the coordinate provisions of the constitution of the state of Connecticut?

6. If the answer to question 4 above is no, are section 11 of article third of the constitution of the state of Connecticut and/or section 2-5 of the General Statutes, as applied to the plaintiff in the circumstances herein, violative of the plaintiff's rights under the first amendment and due process clause of the United States constitution and coordinate provisions of the constitution of the state of Connecticut?

7. If the answer to question 4 above is no, are section 11 of article third of the constitution of the state of Connecticut and/or section 2-5 of the General Statutes, as applied to the plaintiff in the circumstances herein, unduly vague and violative of the plaintiff's rights under the due process clause of the United States constitution and the coordinate provisions of the constitution of the state of Connecticut?

8. May the defendant comptroller of the state of Connecticut refuse to make salary payments to the plaintiff solely upon the claim that the plaintiff, by holding a faculty appointment and position at Southern Connecticut while a member of the General Assembly, is in violation of section 11 of article third of the constitution of the state of Connecticut and section 2-5 of the General Statutes?

[2] The dual-job ban provision was first made part of the constitution on August 5, 1955, as article tenth, § 6 of the 1955 constitution.

or appointed to any board, commission, council or other agency in the legislative department."[3]

Since the statutory provision contained in § 2-5 only prohibits the appointment of one already a state legislator to a position in one of the three departments of our government, it has no application to the plaintiff in the present case because his employment as a teacher at Southern Connecticut commenced during the 1966-1967 academic year, i.e., prior to his election. Although the plaintiff's position was terminated in 1969, the United States District Court for the district of Connecticut, in a judgment rendered in 1972, declared his discharge unconstitutional and ordered him reinstated with tenure and back pay in order to " 'put him in as good a [594] position as he would have occupied but for the unconstitutional infringement of his first amendment rights.' " *Stolberg* v. *Members of Board of Trustees,* 541 F.2d 890, 892 (2d Cir.). The plaintiff ran for, and was elected to, a term of office in the General Assembly beginning in 1971. Because the termination of the plaintiff's employment as a teacher was adjudged by the court to have been invalid, his reinstatement pursuant to the 1972 judgment cannot be considered an appointment of one who is already a state legislator.

The constitutional provision may, however, be applicable since the plaintiff's status as a teacher is an "appointive position" within the meaning of the constitutional provision. While the common meaning of the word "appoint" is "[t]o assign, designate"; Webster, New International Dictionary (2d Ed.); the word also connotes authority to place in office. The fact that the position to which the plaintiff was appointed was not, in the legal sense, an office but merely an employment does not render the dual-job ban inapplicable under the facts presented since an employee can be said to have been assigned or designated to do a certain job. *McAdams* v. *Barbieri,* 143 Conn. 405, 417, 123

[3] The statutory ban was first enacted in 1953. Public Acts 1953, No. 368, § 157.

A.2d 182. Moreover, the term "position" as used in § 5-196 (u) of the General Statutes, dealing with state employees, is defined as "a group of duties and responsibilities currently assigned or designated by competent authority to require the services of one employee." Hence, article third, § 11, in its reference to a "position or office," cannot be said to be limited to office-holding alone—it was clearly intended to encompass state employment generally. Further, since the board of trustees of the state colleges is authorized under § 10-109b of the General [595] Statutes to appoint executive officers and to employ faculty members of the state colleges, the plaintiff's status as a teacher is an "appointive position" within the meaning of the constitutional provision.

II

Initially we consider article second of the Connecticut constitution since the basic claims of the plaintiff involve certain historic and fundamental principles as to the respective powers of the legislative, judicial and executive departments under the state constitution. The provisions of article second, which were carried from the constitutions of 1818 and 1955, separate the powers of government into three distinct departments as follows: "The powers of government shall be divided into three distinct departments, and each of them confided to a separate magistracy, to wit, those which are legislative, to one; those which are executive, to another; and those which are judicial, to another." Prior to the adoption of the state's first constitution in 1818, the legislative, executive and judicial powers had been centered in, and exercised by, the General Assembly and its predecessor, the General Court. It is significant to note that the constitution represented a grant of power from the people, in whom all power originally resided, that the powers granted to the legislature are legislative only, those granted to the judiciary are judicial only, those granted to

the executive are executive only, and that such powers are complete except as restricted by the state or federal constitution. *Adams* v. *Rubinow,* 157 Conn. 150, 153-54, 251 A.2d 49; *Norwalk Street Ry. Co.'s Appeal,* 69 Conn. 576, 587, 37 A. 1080, 38 A. 708; see *Afroyim* v. *Rusk,* 387 U.S. 253, 257, 87 S. Ct. 1660, 18 L. Ed. 2d 757.

[596] Although, as Chief Justice King remarked in the *Adams* case, "grave constitutional questions cannot be so easily solved," the language of the constitution of Connecticut controverts any intention to provide for a distribution of powers of government to a separate, fourth magistracy of government outside those three clearly defined in article second. There is no hint of an intent to establish Connecticut's state colleges as independent and autonomous state institutions, the faculties and professional staffs of which are deemed outside the judicial, legislative or executive department of the state government. While it is often true that the powers granted to the departments of government necessarily overlap to some extent; *In re Application of Clark,* 65 Conn. 17, 38, 31 A. 522; and that the concept of separation of powers is not one that is capable of precise legal definition yielding clear solutions to intragovernmental disputes; see *Nixon* v. *Administrator of General Services,* 433 U.S. 425, 441-46, 97 S. Ct. 2777, 53 L. Ed. 2d 867; neither this apparent commingling of functions and duties nor the potential for any uncertainty compels us to conclude that a new and separate branch of government has been created. See *Powers* v. *Hotel Bond Co.,* 89 Conn. 143, 147-49, 93 A. 245. In *Powers,* for example, this court pointed out that, under the new system established by the legislature pursuant to the Workmen's Compensation Act of 1913, the compensation commissioner was not a court but an executive officer engaged in administrative duties in spite of the fact that he performed some duties which were quasi judicial in nature.

In addition to the use of the phrases "distribution of powers" and "the powers of government" in article second,

article third speaks of "legislative [597] power" in defining the legislative department, article fourth, concerning the executive department, is interlaced with references to the distribution and use of "power," and article fifth, in establishing the judicial department, likewise employs the use of the words "power" and "powers." Since all the powers initially residing in the people were granted to these three departments of state government, no additional powers remained to be distributed.

In contradistinction, article eighth of our constitution provides in part: "Sec. 1. There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation. Sec. 2. The state shall maintain a system of higher education, including The University of Connecticut, which shall be dedicated to excellence in higher education. The general assembly shall determine the size, number, terms and method of appointment of the governing boards of The University of Connecticut and of such constituent units or coordinating bodies in the system as from time to time may be established." It contains no reference to the distribution or use of power nor does it indicate that the framers of the constitution intended to create a separate department of education within the state government.

In dealing with constitutional provisions we must assume that definite care was employed to couch in scrupulously fitting language a proposal aimed at establishing or changing the organic law of the state. *Cahill* v. *Leopold,* 141 Conn. 1, 19, 103 A.2d 818; 1 Cooley, Constitutional Limitations (8th Ed.) p. 125. Unless there is some clear reason for not doing so, effect must be given to every part [598] of and each word in the constitution. The plain, meticulous and historic choice of language clearly conveys grants of power solely to the three departments of government. Such language does not appear in the original or

later constitutional provisions concerning education in article eighth, first embodied in the constitution adopted in 1818, later in those of 1955 and 1965.

It is a basic principle of constitutional law that one department cannot interfere with or encroach on either of the other departments. *State* v. *Stoddard,* 126 Conn. 623, 627, 13 A.2d 586. The division of governmental powers among the three departments, the legislative, the executive and the judicial, each separate from the others but subject to regulations by law touching upon the discharge of duties required to be performed, is one of the fundamental principles of the American constitutional system. *Evans* v. *Gore,* 253 U.S. 245, 40 S. Ct. 550, 64 L. Ed. 887. This means that the general functions of government fall into the three departments outlined. Such provisions have as their primary purpose the prevention of a commingling of essentially different powers of government in the same hands; *O'Donoghue* v. *United States,* 289 U.S. 516, 530-31, 53 S. Ct. 740, 77 L. Ed. 1356; so that the principle of the separation of powers operates in a broad manner to confine the legislative, executive and judicial powers to each department within the limits set forth by the constitution. *Norwalk Street Ry. Co.'s Appeal,* 69 Conn. 576, 587, 37 A. 1080, 38 A. 708.

It is manifest from the extensive legislation relating to the furnishing of education for the general public that it is a state function and duty under our law. *West Hartford Education Assn., Inc.* v. [599] *DeCourcy,* 162 Conn. 566, 573, 295 A.2d 526; *Board of Education* v. *D'Aulisa,* 133 Conn. 414, 418, 52 A.2d 636. Since early times the state has had a continuous interest in education; the duty of providing for the education of children was always regarded as a duty resting on the state, and there was no question that the legislature had the plenary power to create, consolidate and abolish school districts. *State ex rel. Walsh* v. *Hine,* 59 Conn. 50, 60, 21 A. 1024. Without distributing and dividing the

powers of government so as to create a distinct, separate fourth magistracy, the state exercised its broad, sovereign power in legislating concerning educational matters. The Connecticut education system has developed from the small, practically independent school district through a consistent legislative policy of consolidating and centralizing schools and their administration. Thus, "[t]he determination of the state policy in a matter of this kind is for the General Assembly." *Regional High School District No. 3* v. *Newtown,* 134 Conn. 613, 617, 59 A.2d 527.

The adoption, in 1965, of a new § 2 to article eighth of our state constitution cannot be held to have changed this fundamental structuring of our governmental system. Prior to that date, the state's system of higher education had been established and had existed pursuant to legislation originating in 1849. Public Acts 1849, c. 23. In 1965, separate legislation established "the state system of higher education" the constituent units of which included, inter alia, the University of Connecticut and its branches and the state colleges. Public Acts 1965, No. 330, § 1. The authority and responsibility for the operation of the state's public institutions were vested in the boards of trustees of the various "constituent units": § 4; while the coordination and [600] planning for higher education was to be the responsibility of a commission for higher education, some of the members of which were appointed by the governor, while others consisted of one member of each board of trustees within the state system. § 2. Subsequent to the enactment of Public Act No. 330, the 1965 constitutional convention revised § 2 of article eighth to read as follows: "The state shall maintain a system of higher education, including The University of Connecticut, which shall be dedicated to excellence in higher education. The general assembly shall determine the size, number, terms and methods of appointment of the governing boards of The University of Connecticut and of such constituent units or

coordinating bodies in the system as from time to time may be established." Since, pursuant to Public Act No. 330, the general assembly had already determined the size, number, terms and methods of appointment of the governing boards or coordinating bodies in the state system, the constitutional provision was merely an affirmation of the existing legislative authority exercised by the general assembly in the structuring of our state system of higher education.

In 1977, the state system of higher education was restructured once again, pursuant to Public Acts 1977, No. 77-573. A board of higher education was established and was to be composed of members appointed by the governor along with those appointed by the leaders of the general assembly. § 2 (a). The duties of the board include establishing the state-wide policy for the state's systems of higher education as well as those powers and duties formerly provided to the commissioner for higher education. § 25. Specifically, the duties and responsibilities of the board of higher education include: [601] preparing and presenting to the governor and general assembly a consolidated public higher education budget from those individual budgets submitted by the individual boards of trustees; §§ 6 (a) (1), 7 (a); reviewing and approving plans received from the constituent unit boards; § 6 (a) (3); developing criteria to ensure acceptable quality in programs and institutions and enforcing standards through licensing and accreditation; § 6 (a) (4); initiating and approving changes in tuition and fee schedules; § 8; preparing a master plan for public higher education; § 6 (c); settling disputes between boards of trustees; § 19; and approving leases made by the constituent units. § 19. The board of higher education, therefore, like its predecessor the commission for higher education, generally directs and oversees the system of higher education in this state.

That the state board of higher education is within the executive department cannot now be seriously open to question. Public Acts 1977, No. 77-614, entitled "An Act Concerning the Reorganization of the Executive Branch of State Government," specifically provides that the state board of higher education "shall be within the executive branch of the state government." § 3. Since this enactment is merely a "reorganization" of "existing state agencies into a reasonable number of departments" in order to "elimate duplication of effort within the executive branch of state government"; § 2 (a); we may infer that, prior to 1977, the commission on higher education was similarly considered to be within the executive branch.

As noted earlier, the board of higher education has a wide variety of duties and responsibilities [602] regarding control and supervision over the system of higher education in this state generally and, more particularly, over the boards of trustees of the constituent units. Having observed that the state board of higher education is unequivocably within the executive department of our government, therefore, it must logically follow that the "constituent units" and their separate governing bodies similarly fall within that department for the purposes of the dual-job ban provisions.[4]

The plaintiff places much reliance upon the fact that the General Statutes impose a wide range of authority with the individual boards of trustees of the various institutions. The boards of trustees, for instance, have "sole jurisdiction" over the appointment, salaries, termination, rank and status of the teachers at their respective institutions within the limits and the available funds. Public Act No. 77-573,

[4] Although the plaintiff argues that the state board is not a part of the state system of higher education and that the various institutions are "constituent units" only of the state system, we note that General Statutes § 5-160, as amended by Public Acts 1977, No. 77-573, § 21 (g) (dealing with the state retirement plan) refers to teachers "employed by the board of higher education or *any of its constituent units.*" (Emphasis added.)

§ 14. Further, the trustees are entrusted with responsibility for providing certain degree programs at their institutions. Id., § 16. This independence conferred upon the boards of trustees, however, does not, as the plaintiff suggests, support his assertion that state colleges are autonomous institutions which are not within any one of the three departments of government delineated in article second of our constitution.

Education in general holds a unique place in our society and "is perhaps the most important function [603] of state and local governments." *Brown* v. *Board of Education,* 347 U.S. 483, 493, 74 S. Ct. 686, 98 L. Ed. 873. As a result, it is understandable that the control over day-to-day operations of the institutions of higher education in this state remains with the various boards of trustees so that they may be free to exercise independent judgment unfettered by political considerations. By virtue of article eighth, § 2, of our constitution, for instance, "[i]t was intended that the board of trustees and the administrators [of the University of Connecticut] were to be free to decide what is wise in educational policy." *Simmons* v. *Budds,* 165, Conn. 507, 514, 338 A.2d 479. Similar considerations are applicable to the other state institutions of higher education.

Although the legislative branch, the general assembly, is, through article eighth, § 2, of the constitution, responsible for determining the size, number, terms and method of appointment of the governing boards of the constituent units of our system of higher education, the basic constitutional provision requiring the state to maintain a system of higher education is not necessarily self-executing since, by implication, it requires additional legislative action to implement its purpose. *State ex rel. Cotter* v. *Leipner,* 138 Conn. 153, 158, 83 A.2d 169; 1 Cooley, Constitutional Limitations (8th Ed.) p. 165. The constitutional provision is,

therefore, made effective by the requisite legislation—namely, by the provisions contained in title 10 of the General Statutes.

It is the province of the legislative department of our government, therefore, to determine the general public policy in the area of higher education, but such policy is to be applied by the executive [604] branch. See *Colgate-Palmolive-Peet Co.* v. *National Labor Relations Board,* 338 U.S. 355, 363, 70 S. Ct. 166, 94 L. Ed. 161. It is through the teacher that this state's standards of educational excellence are disseminated. "When so engaged, . . . [he is] exercising one of the functions of the executive department of our state government." *Monaghan* v. *School District No. 1,* 211 Ore. 360, 376, 315 P.2d 797; see *Galer* v. *Board of Regents of the University System,* 239 Ga. 268, 269, 236 S.E.2d 617; 68 Am. Jur. 2d, Schools, § 129.

"There is no suggestion made here that . . . [the plaintiff] has by reason of his dual positions as a legislator and a teacher, used either to the detriment of either department of government, the legislative or executive, nor do we impute to him any unworthy motive in his desire to retain both places at the same time. Our concern is not with what has been done but rather what might be done, directly or indirectly, if one person is permitted to serve two different departments at the same time. The constitutional prohibition is designed to avoid the opportunities for abuse arising out of such dual service whether it exists or not." *Monaghan* v. *School District No. 1,* supra.

In view of the unique and extremely important place of education in our system of government, we are compelled to resolve all doubts regarding the possibility of incursions of the legislature into the area occupied by education as an administrative function of the executive department in favor of "a decisive separation of these powers." Id., 375.

We conclude, therefore, that the plaintiff's employment violates the constitutional dual-job ban.

[605] III

Having determined that the plaintiff's status as both a state college professor and a state legislator violates the Connecticut constitutional dual-job ban, we consider his claim that his election to the legislature did not invoke the operation of the doctrine that he had impliedly relinquished his state college faculty position. Under the common law, it is well settled that a person may not simultaneously hold two offices which are incompatible, and when one accepts and qualifies for a second office which is incompatible with the first, he vacates, or by implication resigns, the first. *State ex rel. Butera* v. *Lombardi,* 146 Conn. 299, 302, 150 A.2d 309; *State ex rel. Schenck* v. *Barrett,* 121 Conn. 237, 242, 184 A. 379. Where, however, the holding of two offices or positions at the same time is forbidden by constitution or statute, "an incompatibility is created similar in its effect to that of the common law, and as in the case of the latter, the acceptance of the second office [or position] operates ipso facto to vacate the first. Mechem, Public Officers § 429; 67 C.J.S. 149, § 23." *State ex rel. Butera* v. *Lombardi,* supra, 302-303. Where, as here, the illegality of holding the two positions is declared by a constitutional provision, no factual incompatibility need be shown. Ibid.; 63 Am. Jur. 2d, Public Officers and Employees, § 63.

At the end of the academic year 1968-1969, the plaintiff in the present case was dismissed from his teaching position at Southern Connecticut. In 1969, he commenced a federal civil rights action seeking reinstatement with tenure and other relief claiming that the termination of his position was violative of [606] his constitutional rights. In the fall of 1970, the plaintiff ran for and was elected to a seat in the House of Representatives of the General Assembly. In March of 1972, the Unitd States District Court for the district of Connecticut rendered judgment in the plaintiff's favor; *Stolberg* v. *Members of Board of Trustees,* Civil No. 13,591 (D. Conn.), aff'd in part, 474 F.2d 485 (2d Cir.); and,

pursuant to that judgment, he was reinstated by the board of trustees and returned to his faculty position with tenure.[5]

Since the purpose of the judgment of the district court was to " 'put . . . [the plaintiff] in as good a position as he would have occupied but for the unconstitutional infringement of his first amendment rights' "; *Stolberg* v. *Members of Board of Trustees,* supra, 892; the effect of that decision was to render the plaintiff's termination invalid and thus to restore him to his teaching position as of 1969. Hence, when he commenced his term of office in the General Assembly in 1971, the constitutional dual-job prohibition created an incompatibility of positions necessitating the application of the doctrine of implied relinquishment. *State ex rel. Butera* v. *Lombardi,* supra.

In his brief, the plaintiff argues that the common-law doctrine has no application in the present case since: (a) § 10-329a of the General Statutes expressly provides that the state college trustees have sole jurisdiction over the termination of [607] faculty members; (b) the trustees have continued his appointment and continued to submit his name on regular payrolls; (c) §§ 10-109b and 10-110 of the General Statutes provide the trustees with the authority to make rules governing faculty service and (d) the rules established by the trustees require advance notice of resignation.

It is a well-settled principle of statutory constuction that a statute will not be construed so as to alter the common law unless such a legislative intention is fairly expressed by the words employed. *Shaw* v. *Railroad Co.,* 101 U.S. 557, 565, 25 L. Ed. 892; *Dennis* v. *Shaw,* 137 Conn. 450, 452, 78 A.2d 691; 2A Sutherland, Statutory Construction (4th Ed.) § 50.05.

---

[5] In a later unpublished opinion, the judgment of the District Court was clarified to indicate that the dual-job ban claim was not an issue in the case and, consequently, that judgment did not prejudice the state's right to assert its constitutional dual-job ban against the plaintiff. See *Stolberg* v. *Members of Board of Trustees,* 541 F.2d 890, 892 (2d Cir.).

The Statutory provisions cited by the plaintiff, providing the board of trustees with the ultimate authority over teacher termination and resignation cannot be said to indicate a legislative intent to alter the common-law doctrine of implied resignation as applicable to the plaintiff.

IV

The plaintiff also claims that the dual-job ban provision as applied to him is constitutionally invalid. Since we have concluded that the statutory prohibition of § 2-5 of the General Statutes is inapplicable to the plaintiff under the circumstances of this case, we confine our consideration to the constitutionality of article third, § 11, of our state constitution.[6]

[608] It is the plaintiff's position that our state constitutional prohibition is invalid under the equal protection clause of the federal constitution. If the provision is found to impinge upon a fundamental right or create a suspect classification, it must be struck down unless justified by a compelling state interest. *Dunn* v. *Blumstein,* 405 U.S. 330, 335, 92 S. Ct. 995, 31 L. Ed. 2d 274. If, however, no fundamental rights or suspect classifications are involved, the prohibition will withstand constitutional attack provided the distinction is founded on a rational basis. *McGinnis* v. *Royster,* 410 U.S. 263, 270, 93 S. Ct. 1055, 35 L. Ed. 2d 282.

There is no express constitutional provision guaranteeing any individual the right to become a candidate for public office. The state can constitutionally place conditions on the right to candidacy so long as those constraints do not violate constitutional principles of general applicability. See, e.g., *Storer* v. *Brown,* 415 U.S. 724, 728, 94 S. Ct.

[6] "[T]he protection of the Federal Constitution applies, whatever the form in which the legislative power of the State is exerted; that is, whether it be by a constitution, an act of the legislature, or an act of any subordinate instrumentality of the State exercising delegated legislative authority." *Standard Computing Scale Co.* v. *Farrell,* 249 U.S. 571, 577, 39 S. Ct. 380, 63 L. Ed. 780.

1274, 39 L. Ed. 2d 714. Neither the first nor the fourteenth amendment automatically interdicts all restrictions on the ability to become a candidate. See *American Party of Texas* v. *White,* 415 U.S. 767, 780-85, 94 S. Ct. 1296, 39 L. Ed. 2d 744.

The plaintiff argues that the dual-job ban illegally burdens a specific class of persons in seeking or holding public office, and that such restriction impermissibly impinges upon the first amendment rights of one running for or holding state office. If we assume, without deciding, that the plaintiff has a right to serve in the General Assembly which is an extension of his rights of political association and expression, that right would of course be protected by the first amendment. *Galer* v. *Board of Regents* [609] *of the University System,* 239 Ga. 268, 270, 236 S.E.2d 617; cf. *Elrod* v. *Burns,* 427 U.S. 347, 96 S. Ct. 2673, 49 L. Ed. 2d 547. Although the United States Supreme Court has made it clear that government employees may be subject to restrictions on the exercise of those rights beyond that permissible if applied to private citizens; *Broadrick* v. *Oklahoma,* 413 U.S. 601, 93 S. Ct. 2908, 37 L. Ed. 2d 830; *United States Civil Service Commission* v. *National Assn. of Letter Carriers,* 413 U.S. 548, 93 S. Ct. 2880, 37 L. Ed. 2d 796; *United Public Workers* v. *Mitchell,* 330 U.S. 75, 67 S. Ct. 556, 91 L. Ed. 754; as we have said, such a restriction which impinges upon a fundamental right can be justified only by a compelling state interest. *American Party of Texas* v. *White,* supra, 780.

The state's interest in enforcing the separation of powers provision of article second of our constitution is, by itself, such a compelling and significant governmental interest. "The need for and purpose of . . . [the dual-job ban provision] manifestly was to protect against conflicts of interest, self-aggrandizement, concentration of power, and the blurring and the obliteration of the doctrine of separation of powers, in the performance by the agents of the people of

their delegated authorities to exercise the executive, legislative and judicial functions of the organized government." *Board of Supervisors of Elections* v. *Attorney General,* 246 Md. 417, 428, 229 A.2d 388. Moreover, the restriction imposed on state employees is not aimed at particular political parties, groups or points of view; it does not discriminate against racial, ethnic or religious minorities; and it does not seek to control political association or expression or attempt to interfere with anyone's vote at the polls. See [610] *United States Civil Service Commission* v. *National Assn. of Letter Carriers,* supra, 564. Rather, the prohibition of article third, § 11, applies to all persons holding an appointive position or office in the judicial or executive department of state government, and only curtails the right of such persons to continue to hold that employment while serving in the state legislature, not the right to campaign for and be elected to public office. In view of the significant and compelling public interest in maintaining a separation among the departments of our government and avoiding even the appearance of impropriety by state employees; see *United States Civil Service Commission* v. *National Assn. of Letter Carriers,* supra, 565; article third, § 11, of our state constitution does not violate either the equal protection guarantees or the first amendment of the federal constitution.

The plaintiff likewise challenges the constitutionality of the state's dual-job ban on the ground that it is both void for vagueness and fatally overbroad.

"Laws must give a person of ordinary intelligence a reasonable opporutnity to know what is prohibited so that he may act accordingly . . . [since] [i]t is a basic principle of due process that a statute is void for vagueness if its prohibitions are not clearly defined. See *Lanzetta* v. *New Jersey,* 306 U.S. 451, 59 S. Ct. 618, 83 L. Ed. 888; see generally, note, 'The Void-For-Vagueness Doctrine in the

Supreme Court,' 109 U. Pa. L. Rev. 67." *Mitchell* v. *King,* 169 Conn. 140, 143, 363 A.2d 68.

Article third, § 11, of our state constitution specifically prohibits a member of the General Assembly from holding or accepting "any appointive position or office in the judicial or executive department [611]of the state government." While the plaintiff contends that the use of the words "judicial or executive department" is so imprecise as to render the provision unconstitutional, we recognize that "there are limitations in the English language with respect to being both specific and manageably brief, and it seems to us that although the . . . [prohibition] may not satisfy those intent on finding fault at any cost, . . . [it] is set out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with, without sacrifice to the public interest." *United States Civil Service Commission* v. *National Assn. of Letter Carriers,* supra, 578-79. Since the general prohibition—that is, employment in more than one department of government—is plain in its direction, "the . . . [provision] will not be struck down as vague, even though marginal cases could be put where doubts might arise." *United States* v. *Harriss,* 347 U.S. 612, 618, 74 S. Ct. 808, 98 L. Ed. 989.

We similarly reject the plaintiff's assertion that the dual-job ban contained in our state constitution is impermissibly overboard. To succeed in such a claim it must be shown that the reach of the language, no matter how precise, prohibits conduct protected by the federal constitution. *Mitchell* v. *King,* supra; see *Zwickler* v. *Koota,* 389 U.S. 241, 249-50, 88 S. Ct. 391, 19 L. Ed. 2d 444; see, generally, note, "The First Amendment Overbreadth Doctrine," 83 Harv. L. Rev. 844. Assuming, arguendo, that the plaintiff is correct in his contention that he has a first amendment right to hold office, as we have pointed out, it is clear that state employees may legitimately be subject to restrictions on those rights to participate in political activities beyond

that permissible in the case of private citizens. [612] *Broadrick* v. *Oklahoma,* supra; *United States Civil Service Commission* v. *National Assn. of Letter Carriers,* supra; *United Public Workers* v. *Mitchell,* supra.

Moreover, while we recognize the need to view restrictions upon constitutionally protected activity "in the light of less drastic means for achieving the same basic purpose"; *Shelton* v. *Tucker,* 364 U.S. 479, 488, 81 S. Ct. 247, 5 L. Ed. 2d 231; where, as here, the clear purpose of the prohibition is to avoid even the appearance of impropriety; see *United States Civil Service Commission* v. *National Assn. of Letter Carriers,* supra, 565; a claim of overbreadth cannot be sustained.[7]

V

It is well settled that in an action for mandamus, the aggrieved party must affirmatively establish that he was deprived of a "clear legal right." *Light* v. *Board of Education,* 170 Conn. 35, 37-39, 364 A.2d 229; *Simmons* v. *Budds,* 165 Conn.507, 516, 338 A.2d 479. As noted above, under the facts of the present case, the plaintiff was in violation of the constitutional dual-job ban and thus impliedly relinquished his teaching position when he commenced his term of office in the General Assembly in 1971. Hence, it cannot be said that the plaintiff can, at this point, claim such a "clear legal right" to his faculty salary. Moreover, a public officer cannot be compelled to perform an act which is unlawful, contrary to or forbidden by law, or which would aid in an unlawful transaction. See *Laycock* v. [613] *Hidalgo County Water Control & Improvement District No. 12,* 142, F.2d 789 (5th Cir.), cert. denied, 323 U.S. 731, 65 S. Ct. 68, 89 L. Ed. 587; 52 Am. Jur. 2d, Mandamus, § 87. Where, as here, a valid law requires a state officer to act, he may refuse to act if to do so would violate a constitutional provision; *Rhea* v.

[7] Nor can it be seriously argued that the dual-job restriction challenged in the present case is fatally overbroad when applied to teachers because of its "stifling effect on the academic mind." See *Keyishian* v. *Board of Regents,* 385 U.S. 589, 607, 87 S. Ct. 675, 17 L. Ed. 2d 629.

Newman, 153 Ky. 604, 607, 156 S.W. 154; since he would be derelict in the performance of of his duties if he were an instrumental agent or participant in the unlawful expenditure of public funds.[8] *Weza* v. *Auditor General,* 297 Mich. 686, 690, 298 N.W. 368.

Mandamus is generally viewed as a remedy at law. *United States ex rel. Greathouse* v. *Dern,* 289 U.S. 352, 53 S. Ct. 614, 77 L. Ed. 1250. By stating our conclusion regarding the application of that remedy under the unique facts of this case, however, we express no opinion as to the availability of other remedies the plaintiff may pursue.

VI

The questions reserved for our advice as set forth in footnote one are answered as follows:

To questions 1 (e), 3 and 8 we answer in the affirmative.

To questions 1 (a), 1 (c) and 4 we answer in the negative.

To questions 5, 6, and 7 we answer in the negative insofar as they relate to article third, § 11, of the state constitution.

[614] Questions 1 (b), 1 (d), 1 (f), 2 (a), and 2 (b) require no answers.

No costs will be taxed to any party.

In this opinion the other judges concurred.

[8] We call attention to the fact that the defendant comptroller in the present case withheld payment of the plaintiff's salary only after receiving a legal opinion from the attorney general regarding the propriety of pursuing such a course of action.

APPENDIX B

No. 15 66 86

SUPERIOR COURT

JUDICIAL DISTRICT OF
NEW HAVEN AT NEW HAVEN

IRVING STOLBERG,

Plaintiff,

vs.

LAWRENCE J. DAVIDSON, *et als.,*

Defendants.

JUDGMENT

This action, by agreed case dated November 28, 1977 asking for decision upon questions as to which disputes had arisen among the parties, came to this Court on November 28, 1977.

And, on the nineteenth day of January, 1978, the above cause was on stipulation of all the parties, reserved for the advice of the Supreme Court of the State of Connecticut upon the questions:

1. Is the plaintiff's position as a member of the faculty and professional staff of Southern Connecticut State College:

(a) within the judicial department for purposes of the application of Section 11 of Article Third of the Constitution of the State of Connecticut;

(b) within the judicial department for purposes of the application of Section 2-5 of the General Statutes;

(c) within the legislative department for purposes of the application of Section 11 of the Article Third of the Constitution of the State of Connecticut;

(d) with the legislative department for purposes of the application of Section 2-5 of the General Statutes;

(e) within the executive department for purposes of the application of Section 11 of Article Third of the Constitution of the State of Connecticut;

(f) within the executive department for purposes of the application of Section 2-5 of the General Statues?

2. (a) If the answer to question 1 (c) above is yes, may the plaintiff continue to serve as a member of the faculty and professional staff of Southern Connecticut without violating Section 11 of Article Third of the Constitution of the State of Connecticut, because said section does not bar the plaintiff from holding or accepting a position or office in the legislative department during the term for which he is elected a member of the General Assembly?

(b) If the answer to any of questions 1 (b), 1 (d), or 1 (f) above is yes, may the plaintiff continue to serve as a member of the faculty and professional staff of Southern Connecticut without violating Section 2-5 of the General Statutes, because said section does not bar the plaintiff from simultaneously holding a position in the judicial, legislative, or executive department of the state government and a seat in the General Assembly, if he was elected to the General Assembly and took his seat there while holding the former position?

3. Can the plaintiff's position as a member of the faculty and professional staff of Southern Connecticut be

impliedly relinquished by the plaintiff's becoming a member of the General Assembly?

4. If the answer to question 3 above is yes, and if the plaintiff is in violation of Section 11 of Article Third of the Constitution of the State of Connecticut and/or Section 2-5 of the General Statutes, does the plaintiff nonetheless continue to maintain his position as a member of the faculty and professional staff of Southern Connecticut because the doctrine of implied relinquishment of office operates to cause the plaintiff to relinquish his seat in the General Assembly each time he returns to his position at Southern Connecticut after the commencement of each term for which he was elected to the General Assembly?

5. If the answer to question 4 above is no, are Section 11 of Article Third of the Constitution of the State of Connecticut and/or Section 2-5 of the General Statutes, as applied to the plaintiff in the circumstances herein, overbroad and violative of the plaintiff's rights under the equal protection clause of the United States Constitution and the coordinate provisions of the Constitution of the State of Connecticut?

6. If the answer to question 4 above is no, are Section 11 of Article Third of the Constitution of the State of Connecticut and/or Section 2-5 of the General Statutes, as applied to the plaintiff in the circumstances herein, violative of the plaintiff's rights under the first amendment and due process clause of the United States Constitution and coordinate provisions of the Constitution of the State of Connecticut?

7. If the answer to question 4 above is no, are Section 11 of Article Third of the Constitution of the State of Connecticut and/or Section 2-5 of the General Statutes, as applied to the plaintiff in the circumstances herein, unduly vague and violative of the plaintiff's rights under the due process clause of the United States Constitution and coordinate provisions of the Constitution of the State of Connecticut?

8. May the defendant comptroller of the State of Connecticut refuse to make salary payments to the plaintiff solely upon the claim that the plaintiff, by holding a faculty appointment and position at Southern Connecticut State College while a member of the General Assembly, is in violation of Section 11 of Article Third of the Constitution of the State of Connecticut and Section 2-5 of the General Statutes?

And, the Supreme Court having heard the parties, advised the Superior Court on August 8, 1978, that the answers to questions 1 (e), 3, and 8, are affirmative; the answers to questions 1 (a), 1 (c), and 4, are negative; the answers to questions 5, 6, and 7, are negative insofar as they relate to Article Third, Section 11 of the Constitution of the State of Connecticut; and questions 1 (b), 1 (d), 1 (f), 2 (a), and 2 (b), require no answers.

Whereupon it is ordered, adjudged and decreed that:

1. Plaintiff's position as a member of the faculty and professional staff of Southern Connecticut State College is neither within the judicial department or the legislative department for purposes of the application of Section 11 of Article Third of the Constitution of the State of Connecticut.

2. Plaintiff's position as a member of the faculty and professional staff of Southern Connecticut State College is within the executive department for purposes of the application of Section 11 of Article Third of the Constitution of the State of Connecticut.

3. Plaintiff's position as a member of the faculty and professional staff of Southern Connecticut State College can be impliedly relinquished by plaintiff's becoming a member of the General Assembly.

4. The doctrine of implied relinquishment of office does not operate to cause plaintiff to relinquish his seat in the General Assembly each time he returns to his position at

Southern Connecticut State College after the commencement of each term for which he was elected in the General Assembly; the doctrine of implied relinquishment does operate to cause plaintiff to have relinquished his position as a member of the faculty and professional staff of Southern Connecticut State College by having commenced his term of office in the General Assembly in 1971.

5. Section 11 of Article Third of the Constitution of the State of Connecticut, as applied to plaintiff in the circumstances herein, is not overbroad and is not violative of the plaintiff's rights under the equal protection clause of the United States Constitution.

6. Section 11 of Article Third of the Constitution of the State of Connecticut, as applied to plaintiff in the circumstances herein, is not violative of plaintiff's rights under the first amendment and due process clause of the United States Constitution.

7. Section 11 of Article Third of the Constitution of the State of Connecticut, as applied to plaintiff in the circumstances herein, is not unduly vague and violative of plaintiff's rights under the due process clause of the United States Constitution.

8. The comptroller of the State of Connecticut may refuse to make salary payments to plaintiff solely upon the claim that plaintiff, by holding a faculty appointment and position at Southern Connecticut State College while a member of the General Assembly, is in violation of Section 11 of Article Third of the Constitution of the State of Connecticut and Section 2-5 of the General Statutes.

No costs will be taxed to any party.

6/8/81 /s/ ANTHONY E. GRILLO

[Judge of the Superior Court]

APPENDIX C

[Docket entry re final judgment]

FINAL JUDGMENT

* * *

ENTER ESSENTIAL TERMS OF JUDGMENT

In accordance with signed judgment by direction of Supreme Court.

By GRILLO, J.

DATE OF JUDGMENT 6.8.81

Judgment Entered 6-8 1981
Counsel (parties) notified 6-10 1981
By __Card __Copy of memo
_x_ Other

Copy of judgment.

APPENDIX D

[File notation:] Judicial District of New Haven
Superior Court

FILED
JUN 17 1981
Nicholas J. Cimino,
Chief Clerk

No. 15 66 86

IN THE

Superior Court of the State of Connecticut

JUDICIAL DISTRICT OF NEW HAVEN AT NEW HAVEN

IRVING STOLBERG,

Appellant,

vs.

LAWRENCE J. DAVIDSON,

Appellees.

STATE OF CONNECTICUT

JUDICIAL DISTRICT OF NEW HAVEN AT NEW HAVEN

June 17, 1981

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

1. NOTICE IS HEREBY GIVEN that IRVING STOLBERG, the appellant above-named, hereby appeals to the Supreme

Court of the United States from that part of the final judgment of the Superior Court of the State of Connecticut for the Judicial District of New Haven at New Haven, entered June 8, 1981, which states:

> "5. Section 11 of Article Third of the Constitution of the State of Connecticut, as applied to plaintiff in the circumstances herein, is not overbroad and is not violative of the plaintiff's rights under the equal protection clause of the United States Constitution.
>
> "6. Section 11 of Article Third of the Constitution of the State of Connecticut, as applied to plaintiff in the circumstances herein, is not violative of plaintiff's rights under the first amendment and due process clause of the United States Constitution.
>
> "7. Section 11 of Article Third of the Constitution of the State of Connecticut, as applied to plaintiff in the circumstances herein, is not unduly vague and violative of plaintiff's rights under the due process clause of the United States Constitution.
>
> "8. The comptroller of the State of Connecticut may refuse to make salary payments to plaintiff solely upon the claim that plaintiff, by holding a faculty appointment and position at Southern Connecticut State College while a member of the General Assembly, is in violation of Section 11 of Article Third of the Constitution of the State of Connecticut and Section 2-5 of the General Statutes."

The cause was reserved upon questions for the advice of the Supreme Court of the State of Connecticut, which Court issued said advice on August 8, 1978, and pursuant to which advice the Superior Court entered judgment in this action on June 8, 1981.

2. This appeal is taken pursuant to 28 U.S.C. §1257(2).

/s/ LOUIS M. WINER

Louis M. Winer (Juris No. 68162)
Winer & Sulzbach (Juris No. 68160)
205 Church Street
P.O. Box 1966
New Haven, Connecticut 06509
Telephone No. (203) 789-1796
Attorney for Appellant

CERTIFICATE OF SERVICE

I, LOUIS M. WINER, am counsel for appellant IRVING STOLBERG in this action and am a member of the Bar of this Court and of the Supreme Court of the United States. Pursuant to Rules 28.3 and 28.5 of the Supreme Court Rules, I hereby certify that on this 17th day of June, 1981, one copy of the foregoing Notice of Appeal to the Supreme Court of the United States was deposited in the United States Mails in a United States Post Office, first-class postage prepaid, addressed to Attorney General Carl R. Ajello and Assistant Attorney General Bernard F. McGovern, Jr., Box 120, Hartford, Connecticut 06101, attorneys for appellees Lawrence J. Davidson, *et als.,* who are all the parties required to be served in this action.

/s/ LOUIS M. WINER

Louis M. Winer
Attorney for Appellant

APPENDIX E

Chapter 10, Connecticut General Statutes

PART I. CODE OF ETHICS FOR PUBLIC OFFICIALS

§ 1-79. Definitions

The following terms, when used in this part, shall have the following meanings unless the context otherwise requires:

(a) "Business with which he is associated" means any business in which the public official or state employee or member of his immediate family is a director, officer, owner, limited or general partner or holder of stock constituting five per cent or more of the total outstanding stock of any class. Officer refers only to the president, executive or senior vice president or treasurer of such business.

(b) "Candidate for public office" means any individual who has filed a declaration of candidacy or a petition to appear on the ballot for election as a public official, or who has raised or expended money in furtherance of such candidacy, or who has been nominated for appointment to serve as a public official; but shall not include a candidate for the office of senator or representative in Congress.

(c) "Commission" means the state ethics commission established in section 1-80.

(d) "Gift" means a payment, subscription, advance, forbearance, rendering of services, deposit of money, or anything of value unless consideration of equal or greater value is received. "Gift" shall not include a political contribution otherwise reported as required by law; services provided without compensation by persons volunteering their time; a commercially reasonable loan made on terms not more favorable than loans made in the ordinary course of business; a gift received from an individual's spouse or the parent, brother or sister of such spouse or such individual, or the child or spouse of such child; or food or beverage

or both, consumed on single occasion, the cost of which is less than twenty-five dollars per person.

(e) "Immediate family" means any spouse, dependent children or dependent relatives who reside in the individual's household.

(f) "Individual" means a natural person.

(g) "Member of an advisory board" means any individual (1) appointed by a public official as an advisor or consultant or member of a committee, commission or council established to advise, recommend or consult with a public official or branch of government or committee thereof, (2) who receives no public funds other than a flat per diem rate or reimbursement for his actual and necessary expenses incurred in the performance of his official duties and (3) who has no authority to expend any public funds or to exercise the power of the state.

(h) "Persons" means a business, individual, corporation, union, association, firm, partnership, committee, club or other organization or group of persons.

(i) "Political contribution" has the same meaning as in subsection (a) of section 9-348q.

(j) "Public official" means any statewide elected officer, any member or member-elect of the general assembly, any person appointed to any office of the legislative, judicial or executive branch of state government by the governor, with or without the advice and consent of the general assembly and any person appointed or elected by the general assembly or by any member of either house thereof; but shall not include a member of an advisory board, a judge of any court either elected or appointed or a senator or representative in Congress.

(k) "State employee" means any employee in the executive, legislative or judicial branch of state government, whether in the classified or unclassified service and whether full or part-time, but shall not include a judge of any court, either elected or appointed.

§ 1-80. State ethics commission. Members; appointment; qualifications; vacancies; compensation. Hearings

(a) There shall be a state ethics commission consisting of seven members to be appointed with the advice and consent of the general assembly. One member shall be appointed by the speaker of the house, one member by the president pro tempore of the senate, one member by the minority leader of the senate, one member by the minority leader of the house of representatives and three members by the governor. Members of the commission shall serve for four years, except that members first appointed shall have the following terms: The governor shall appoint two members for a term of three years and one member for a term of four years; the minority leader of the house of representatives and the speaker of the house of representatives shall each appoint one member for a term of two years; the president pro tempore of the senate and the minority leader of the senate shall each appoint one member for a term of four years. No individual shall be appointed to more than one four-year term as a member of such commission. No more than four members shall be members of the same political party. The commission shall be an independent entity within the office of the secretary of the state for administrative purposes only.

(b) All members shall be electors of the state. No member or employee of such commission shall (1) hold or campaign for any public office; (2) have held public office or have been a candidate for public office for a three-year period prior to appointment; (3) hold office in any political party or political committee or be a member of any organization or association organized primarily for the purpose of influencing legislation or decisions of public agencies, or (4) be an individual who is a registrant as defined in subsection (q) of section 1-91.

(c) Any vacancy on the commission shall be filled for the unexpired portion of the term by the appointing authority having the power to make the original appointment. An individual selected by the appointing authority to fill a vacancy shall be eligible for appointment to one full four-year term thereafter. Any vacancy occurring on the commission shall be filled within thirty days.

(d) The commission shall elect a chairperson who shall, except as provided in section 1-82, preside at meetings of the commission and a vice-chairperson to preside in the absence of the chairperson. Five members of the commission shall constitute a quorum. Except as provided in subdivision (3) of section 1-81, subsections (a) and (c) of section 1-82, subdivision (5) of section 1-92, and subsections (a) and (c) of section 1-93, a majority vote of the quorum shall be required for action of the commission. The chairperson or any four members may call a meeting.

(e) Any matter before the commission, except hearings held pursuant to the provisions of subsection (c) of section 1-82 or subsection (c) of section 1-93, may be assigned by the commission to two of its members to conduct an investigation or hearing, as the case may be, to ascertain the facts and report thereon to the commission with a recommendation for action.

(f) Members of the commission shall be compensated at the rate of twenty-five dollars per day for each day they attend a meeting or hearing and shall receive reimbursement for their necessary expenses incurred in the discharge of their official duties.

(g) The commission shall not be construed to be a board or commission within the meaning of section 4-9a.

§ 1-80a. Statements filed with commission. Restrictions on use

The statements of members of the general assembly, elected state officers, commissioners and deputy commissioners required to be filed with and maintained by the

former joint legislative ethics committee under sections 1-76 and 1-77 of the general statutes, revision of 1958, revised to 1977, shall be transferred to the ethics commission established under section 1-80, and shall be maintained by said commission during the term of office of such persons and for a period of two years thereafter. Such statements shall not be open to public inspection except at the direction of the person making the statement, provided such statements may be open to the use of the ethics commission if probable cause has been found under section 1-82 and for the purposes of subsection (c) of section 1-83.

§ 1-81. Duties of commission re reports, advisory opinions and memoranda

(a) The commission shall:

(1) Compile and maintain an index of all reports, advisory opinions, memoranda filed under the provisions of subsection (c) of section 1-82 and statements filed by with the commission to facilitate public access to such reports and statements as provided by this part;

(2) Preserve advisory opinions permanently; preserve memoranda filed under subsection (c) of section 1-82, and statements and reports filed by and with the commission for a period of five years from the date of receipt;

(3) Upon the concurring vote of four of its members, issue advisory opinions with regard to the requirements of this part, upon the request of any public official or state employee, subject to the provisions of this part, and publish such advisory opinions in the Connecticut Law Journal. Advisory opinions rendered by the commission, until amended or revoked, shall be binding on the commission. Any advisory opinion concerning the public official or state employee who requested the opinion and who acted in reliance thereon, in good faith, shall be binding upon the commission, and it shall be an absolute defense in any criminal

action brought under the provisions of this part, that the accused acted in reliance upon such advisory opinion;

(4) Report annually, prior to February fifteenth, to the governor summarizing the activities of the commission.

(b) The commission may employ necessary staff within available appropriations.

§ 1-82. Complaints. Procedure. Investigations; notice. Hearings. Publications of findings. Damages for complaints without foundation.

(a) Upon the complaint of any person on a form prescribed by the commission, signed under penalty of false statement, or upon its own complaint, the commission shall investigate any alleged violation of this part. The commission shall not later than five days after receipt or issuance of such complaint notify by registered or certified mail any respondent against whom such complaint is filed and a copy of such complaint shall accompany such notice. The commission shall also notify the complainant of its receipt of such complaint not later than five days thereafter. Any investigation to determine whether or not there is probable cause that a violation of this part has occurred shall be confidential and any individual called by the commission for the purpose of providing information shall not disclose his knowledge of such investigation to a third party unless the respondent requests that such investigation and disclosure be open. The respondent shall have the right to appear and be heard and to offer any information which may tend to clear him of probable cause to believe he has violated any provision of this part. The respondent shall also have the right to be represented by legal counsel and examine and cross-examine witnesses. The commission shall make no finding that there is probable cause to believe the respondent is in violation of any provision of this part except upon the concurring vote of four of its members.

(b) The commission shall not later than three business days after the termination of such investigation notify the complainant and the respondent that the investigation has been terminated and the results thereof.

(c) If a preliminary investigation indicates that probable cause exists for the violation of a provision of this part, the commission shall initiate hearings to determine whether there has been a violation of this part. A state trial referee or a senior judge, who shall be assigned by the chief court administrator and who shall be compensated in accordance with section 52-434 out of funds available to the commission, shall preside over such hearing and shall rule on all matters concerning the application of the rules of evidence, which shall be the same as in judicial proceedings. Such trial referee or senior judge shall have no vote in any decision of the commission. All hearings of the commission pursuant to this subsection shall be open. At such hearing the respondent shall have the right to be represented by legal counsel, the right to compel attendance of witnesses and the production of books, documents, records and papers and to examine and cross-examine witnesses. The commission may administer oaths and issue subpoenas to compel the attendance of witnesses and the production of books, documents, records and papers and may use the services of the state police, who shall provide the same on request therefor. The state trial referee or the senior judge, as the case may be shall, while engaged in the discharge of his duties as provided in this subsection, have the same authority as is provided in section 51-35 over witnesses who refuse to obey any such subpoena or to testify with respect to any matter upon which such witness may be lawfully interrogated, and may commit any such witness for contempt for a period no longer than thirty days. Any witness summoned before the commission shall receive the witness fee paid to witnesses in the courts of this

state. The commission shall make a record of all proceedings pursuant to this subsection. The commission shall find no person in violation of any provision of this part except upon the concurring vote of five of its members. The commission shall not later than fifteen days after the close of such hearing publish its findings together with a memorandum of its reasons therefor.

(d) If any complaint, brought under the provisions of this part is made with the knowledge that it is made without foundation in fact, the respondent shall have a cause of action against the complaintant for double the amount of damage caused thereby and if the respondent prevails in such action, he may be awarded by the court the costs of such action together with reasonable attorneys' fees.

§1-83. Statements of financial interests. Filing requirements

(a) All statewide elected officers, members of the general assembly, commissioners, deputy commissioners, members of the gaming policy board, the executive director of the division of special revenue within the department of revenue services and such members of the executive department as the governor shall require, shall file, under penalty of false statement, a statement of financial interests for the preceding calendar year with the commission on or before the April fifteenth next in any year in which he holds such a position.

(b)(1) The statement shall include the following information for the preceding calendar year in regard to the individual required to file the statement and his spouse and dependent children residing in the individual's household: (A) the names of all businesses with which he is associated; (B) the category or type of all sources of income in excess of one thousand dollars, amounts of income shall not be specified, and the names

and addresses of specific clients and customers who provide more than five thousand dollars of income, amounts of income not to be specified (C) the name of securities in excess of five thousand dollars at fair market value owned by the individual or held in the name of a corporation, partnership or trust for the benefit of such individual, except in the case of a trust established by an individual for the purpose of divesting himself of all control and knowledge of his assets in order to avoid a conflict of interest during his term of office, only the existence of such trust and the name of the trustee shall be included, but the value shall not be specified; (D) all real property and its location, whether owned by the individual or held in the name of a corporation, partnership or trust; (2) every individual subject to this section shall file a disclosure with the commission of any fees or honorariums received for any appearance or the delivery of an address to any meeting of any organization. Such disclosure shall be made within thirty days after receipt of such fee or honorarium.

(c) The statement filed pursuant to this section shall be a matter of public information, except the list of names, filed in accordance with subparagraph (B) of subdivision (1) of subsection (b) of this section shall be sealed and confidential and for the use of the commission only after probable cause has been found under section 1-82 and not open to public inspection unless the respondent requests otherwise. If the commission reports its findings to the chief state's attorney in accordance with subsection (b) of section 1-88, the commission shall turn over to the chief state's attorney such relevant information contained in the statement as may be germane to the specific violation or violations or a prosecutorial official may subpoena such statement in a criminal action.

§1-84. Prohibited activities

(a) No public official or state employee shall, while serving as such, have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties or employment in the public interest and of his responsibilities as prescribed in the laws of this state, as defined in section 1-85.

(b) No public official or state employee shall accept other employment which will either impair his independence of judgment as to his official duties or employment or require him, or induce him, to disclose confidential information acquired by him in the course of and by reason of his official duties.

(c) No such public official or state employee shall wilfully and knowingly disclose, for pecuniary gain, to any other person, confidential information acquired by him in the course of and by reason of his official duties or employment or use any such information for the purpose of pecuniary gain and no public official or state employee shall use his public office or any confidential information received through his holding public office to obtain financial gain for himself, his spouse, child, child's spouse, parent, brother or sister or a business with which he is associated.

(d) No public official or his employee or state employee or his employee shall agree to accept, or be a member or employee of a partnership, association, or a professional corporation which partnership, association or professional corporation agrees to accept, any employment, fee or other thing of value, or portion thereof, in consideration of its appearing, agreeing to appear, or taking any other action on behalf of another person before the banking commissioner, the claims commissioner, the department of liquor control, the department

of motor vehicles, the state insurance purchasing board, the department of environmental protection, the division of special revenue within the department of revenue services, the gaming policy board within the department of revenue services or the Connecticut real estate commission; provided this shall not prohibit any such person from making inquiry for information on behalf of another before any of said commissions or commissioners if no fee or reward is given or promised in consequence thereof. For the purpose of this section, partnerships, associations or professional corporations refer only to such partnerships, associations or professional corporations which have been formed to carry on the business or profession directly relating to the employment, appearing, agreeing to appear or taking of action provided for in this subsection. Nothing in this subsection shall prohibit any employment, appearing, agreeing to appear or taking action before any municipal board, commission or council. Nothing in this subsection shall be construed as applying to any member of an advisory board or commission who receives no compensation other than a flat per diem rate or reimbursement for actual or necessary expenses, or both, incurred in the performance of his duties.

(e) No legislative commissioner or his partners, employees or associates shall represent any person subject to the provisions of part ii concerning the promotion of or opposition to legislation before the general assembly, or accept any employment which includes an agreement or understanding to influence, or which is inconsistent with, the performance of his official duties.

(f) No person shall offer or give to a public official or state employee or candidate for public office or his spouse, his parent, brother, sister or child or spouse of such child or a business with which he is associated, anything of value, including but not limited to, a gift, loan, political

contribution, reward or promise of future employment based on any understanding that the vote, official action or judgment of the public official, state employee or candidate for public office would be or had been influenced thereby.

(g) No public official or state employee or candidate for public office shall solicit or accept anything of value, including but not limited to, a gift, loan, political contribution, reward or promise of future employment based on any understanding that the vote, official action or judgment of the public official or state employee or candidate for public office would be or had been influenced thereby.

(h) Nothing in subsection (f) or (g) of this section shall be construed to permit any activity otherwise prohibited in section 53a-147 or 53a-148.

(i) No public official or state employee or member of his immediate family or a business with which he is associated shall enter into any contract with the state, valued at one hundred dollars or more, other than a contract of employment as a state employee or pursuant to a court appointment, unless the contract has been awarded through an open and public process, including prior public offer and subsequent public disclosure of all proposals considered and the contract awarded. Nothing in this subsection shall be construed as applying to any public official who is appointed as a member of the executive branch and who receives no compensation other than reimbursement for actual or necessary expenses, or both, incurred in the performance of his duties except if the public official has authority or control over the subject matter of the contract. Any contract made in violation of this subsection shall be voidable by a court of competent jurisdiction if the suit is commenced within ninety days of the making of the contract.

§ 1-85. Interest in conflict with discharge of duties

A public official or state employee has an interest which is in substantial conflict with the proper discharge of his duties or employment in the public interest and of his responsibilities as prescribed in the laws of this state, if he has reason to believe or expect that he will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason of his official activity. He does not have an interest which is in substantial conflict with the proper discharge of his duties in the public interest and of his responsibilities as prescribed by the laws of this state, if any benefit or detriment accrues to him as a member of a business, profession, occupation or group to no greater extent than any other member of such business, profession, occupation, or group.

§ 1-86. Procedure when discharge of duty affects official's or state employee's financial interests

Any public official or state employee who, in the discharge of his official duties, would be required to take an action that would affect a financial interest of himself, his spouse, parent, brother, sister, child or the spouse of a child or a business with which he is associated, other than an interest of a de minimus nature or an interest that is not distinct from that of the general public, shall be excused from voting or deliberating or taking action on the matter, if he so requests, but if he does not make such request, he shall take the following actions: (a) Prepare a written statement signed under penalty of false statement describing the matter requiring action and the nature of the potential conflict; state why despite the potential conflict, he is able to vote and otherwise participate fairly, objectively and in the public interest; and (b) deliver a copy of the statement to the commission and if he is a member of a legislative or state regulatory agency, he shall deliver a copy of the statement to be

recorded in the journal or minutes of the body or (c) if he is not a member of a legislative or state regulatory agency, he shall prepare a written statement signed under penalty of false statement describing the matter requiring action and the nature of the potential conflict and deliver a copy of the statement to his immediate superior, if any, who shall assign the matter to another employee, or if he has no immediate superior, he shall take such steps as the commission shall prescribe or advise to remove himself from influence over actions and decisions on the matter.

§ 1-87. Aggrieved persons. Appeals

Any person aggrieved by any final decision of the commission, made pursuant to this part, may appeal such decision in accordance with the provisions of section 4-183.

§ 1-88. Authority of commission after finding violation

(a) The commission, upon a finding, made pursuant to section 1-82, that there has been a violation of any provision of this part shall have the authority to order the violator to do any or all of the following: (1) Cease and desist the violation of this part; (2) file any report, statement or other information as required by this part, and (3) pay a civil penalty of not more than one thousand dollars for each violation of this part.

(b) Notwithstanding the provisions of subsection (a), the commission may, after a hearing conducted in accordance with sections 4-177 to 4-184, inclusive, impose a civil penalty not to exceed ten dollars per day upon any individual who fails to file any report, statement or other information as required by this part. Each distinct violation of this subsection shall be a separate offense and in case of a continued violation, each day thereof shall be

deemed a separate offense. In no event shall the aggregate penalty imposed for such failure to file exceed one thousand dollars.

(c) The commission may also report its finding to the chief state's attorney for any action deemed necessary.

§ 1-89. Violations; penalties. Disciplinary powers of the legislature, agencies and commissions

(a) Any person who intentionally violates any provision of this part shall be imprisoned for a term not to exceed one year or shall be fined an amount not to exceed one thousand dollars, or both, provided no person may be found guilty of a violation of subsection (f) or (g) of section 1-84 and bribery or bribe receiving under section 53a-147 or 53a-148 upon the same incident, but such person may be charged and prosecuted for all or any of such offenses upon the same information.

(b) The penalties prescribed in this part shall not limit the power of either house of the legislature to discipline its own members or impeach a public official, and shall not limit the power of agencies or commissions to discipline their officials or employees.

§ 1-90. Commission to review oath of office for members of general assembly

The state ethics commission shall review the oath of office, provided in section 1-25 for members of the general assembly and executive officers, and shall submit to the joint standing committee on government and administrative policy, or or before January 15, 1978, a recommendation for inclusion in said oath of a provision for adherence to the standards set forth in this part.

APPENDIX F

Sections 53a-146, 53a-147, 53a-148, Connecticut General Statutes.

§ 53a-146. Definitions

For the purposes of this part:

(1) An "official proceeding" is any proceeding held or which may be held before any legislative, judicial, administrative or other agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner or notary or other person taking evidence in connection with any proceeding.

(2) "Benefit" means gain or advantage, or anything regarded by the beneficiary as a gain or advantage, including benefit to any person or entity in whose welfare he is interested.

(3) "Public servant" is an officer or employee of government, elected or appointed, and any person participating as advisor, consultant or otherwise in performing a governmental function.

(4) "Government" includes any branch, subdivision or agency of the state or any locality within it.

(5) "Labor official" means any duly appointed or elected representative of a labor organization or any duly appointed or elected trustee or representative or an employee welfare trust fund.

(6) "Witness" is any person summoned who may be summoned, to give testimony in an official proceeding.

(7) "Juror" is any person who has been drawn or summoned to serve or act as a juror in any court.

(8) "Physical evidence" means any article, object, document, record or other thing of physical substance which is

or is about to be produced or used as evidence in an official proceeding.

§ 53a-147. Bribery: Class D felony

(a) A person is guilty of bribery if he offers, confers or agrees to confer upon a public servant any benefit as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a public servant.

(b) Bribery is a class D felony.

§ 53a-148. Bribe receiving; Class D felony

(a) A public servant is guilty of bribe receiving if he solicits, accepts or agrees to accept from another any benefit as consideration for his decision, opinion, recommendation, vote or other exercise of discretion.

(b) Bribe receiving is a class D felony.

APPENDIX G

Sections 10-109, 10-109a, 10-109b, Connecticut General Statutes.

§10-109. Maintenance. Number of students. Degrees

The board of trustees of the state colleges shall maintain: Western Connecticut State College, Southern Connecticut State College, Eastern Connecticut State College and Central Connecticut State College. Said board shall offer at each of said colleges curricula which shall prepare persons who have successfully completed the same to teach in the schools of the state and, in addition, programs of study in academic fields. The number of students and the policies for admission in each college shall be determined by said board. Each of said colleges shall confer such degrees in education and in academic fields as are appropriate to the curricula of said college and as are usually conferred by the colleges, but no honorary degrees shall be conferred.

§10-109a. Board of trustees for state colleges

There shall continue to be a board of trustees for the state colleges to consist of sixteen members, fourteen to be appointed by the governor, two of whom shall be state college alumni; and two to be elected by the students enrolled at the institutions under the jurisdiction of said board. On or before July 1, 1975, the governor shall appoint two members of said board, each of whom shall be an alumnus of a state college, one of whom shall serve a term of four years from said date and one of whom shall serve a term of six years from said date. Biennially thereafter the governor shall apoint members of said board to succeed those appointees whose terms expire, such members to serve for terms of six years each from July first in the year of their appointment. On or before November 1, 1975, the students enrolled at the institutions under the jurisdiction of said board shall, in such manner as said board shall

determine, elect two members of said board, each of whom shall be enrolled as a fulltime student at an institution under the jurisdiction of said board at the time of his election. One such member shall be elected for a term of one year from November 1, 1975, and one for a term of two years from said date. On or before November first, annually thereafter, such students shall, in such manner as the board shall determine, elect one member of said board, who shall be so enrolled at any such institution at the time of his election and who shall serve for a term of two years from November first in the year of his election. The board shall, biennially, elect from its members a chairman and such other officers as it deems necessary. The governor shall fill any vacancy in the appointed membership of the board by appointment for the balance of the unexpired term. Any vacancies in the elected membership of said board shall be filled by special election for the balance of the unexpired term. The members of said board shall receive no compensation for their services as such but shall be reimbursed for their necessary expenses in the course of their duties.

§10-109b. Duties of state college trustees

Said board of trustees shall administer the state colleges, plan for the expansion and development of the institutions within its jurisdiction, and submit such plans to the commission for higher education and the public works commissioner and the state properties review board for approval. The commissioner of public works upon request of the board of trustees and after approval of the commission, shall, in accordance with section 4-128, negotiate and execute leases on such physical facilities as the board of trustees may deem necessary for proper operation of such institutions, and said board of trustees may, with the permission of the public works commissioner and the state properties review board, expend capital funds therefor if

such leasing is required during the planning and construction phases of institutions within its jurisdiction for which such capital funds were authorized. The board of trustees may appoint or remove the chief executive officer of each institution within its jurisdiction, and with respect to its own operation the board of trustees may appoint and remove an executive secretary and executive staff. The board may determine the size of the executive staff and the duties, terms and conditions of employment of said secretary and staff, subject to the approval of the commission. The board of trustees may employ faculty and other personnel needed to maintain and operate the institutions within its jurisdiction. Within the limitation of appropriations, the board shall fix the compensation of such personnel, establish terms and conditions of employment and prescribe their duties and qualifications. Said board shall determine who constitutes its professional staff and establish compensation and classification schedules for its professional staff. Said board shall annually submit to the personnel policy board a list of the positions which it has included within the professional staff. The board may appoint one or more physicians for the state colleges and shall provide such physicians with suitable facilities for the performance of such duties as it prescribes. After the approval by the commission of any plan of the board for development of a new state college, the board shall, with the advice of, and subject to the approval of the commission, submit the same to the public works commissioner and request such commissioner to select the site for such new college. Within the limits of the bonding authority therefor and subject to the provisions of section 4-26b, the public works commissioner may acquire such site and construct such buildings as are consistent with the plan of development approved by the commission.

APPENDIX H

Section 4, Article Tenth, Connecticut Constitution of 1818.

§4. Certain officers excluded form General Assembly

SEC. 4. No judge of the Superiour Court, or of the supreme Court of Errors; no member of Congress; no person holding any office under the authority of the United States; no person holding the office of Treasurer, Secretary, or Controller; no Sheriff, or sheriffs' deputy, shall be a member of the General Assembly.

APPENDIX I

Connecticut General Statutes

CHAPTER 908

AMICABLE SUITS

Section 52-406. Submission of agreed case

Parties to a question in difference which might be the subject of a civil action between them may, without action, agree upon a case containing the facts upon which the controversy depends and submit the same to any court in the county in which either of them resides, in which a suit might have been brought to determine such controversy; but it shall appear by affidavit of the parties, or their respective attorneys, that the controversy is real and the proceeding in good faith to determine the rights of the parties. The court shall thereupon, on payment of the court and clerk fees, as on trial, hear and determine the case and render judgment thereon, which judgment shall be entered as in other cases, but without including costs, and may be enforced in the same manner as if it had been rendered in an action.

APPENDIX J

Connecticut Practice Book (1978)

CHAPTER 54

RESERVATIONS

Sec. 3133. When Entertained

The supreme court will not entertain a reservation for its advice upon questions of law arising in an action which is not ready for final judgment, unless the question or questions presented are such as are, in the opinion of the court, reasonably certain to enter into the decision of the case, and it appears that their present determination would be in the interest of simplicity, directness and economy of judicial action.

All questions presented for advice shall be specific and shall be phrased so as to require a Yes or No answer.

Sec. 3134. Stipulation

Before any question shall be reserved by any court, counsel shall file in that court a stipulation which shall clearly and fully state the question or questions upon which advice is desired; that their present determination by the supreme court would be in the interest of simplicity, directness and economy in judicial action, the grounds for such allegation being particularly stated; that the answers to the questions will determine, or are reasonably certain to enter into the final determination of, the case; and that the parties request that the questions be reserved for the advice of the supreme court.

Motion to Dismiss or Affirm

Office - Supreme Court, U.S.
FILED
OCT 13 1981
ALEXANDER L. STEVAS
CLERK

No. 81-503

In The

Supreme Court of the United States

OCTOBER TERM, 1981

IRVING STOLBERG,
Appellant,

V.

LAWRENCE DAVIDSON, et al.
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF CONNECTICUT

MOTION TO DISMISS OR AFFIRM

CARL R. AJELLO
Attorney General
BERNARD F. McGOVERN, JR.
Assistant Attorney General
Attorneys for the Appellees

Dated: October 9, 1981

QUESTIONS PRESENTED

1. Whether the appellant has filed this appeal within ninety days from the final judgment of the highest court of the State of Connecticut as required by 28 U.S.C. §§ 2101 and 2104 and Rule 11(3) for the Court to take jurisdiction of this appeal.

2. Whether the appellant's claim that Article III, Section 11 of the Constitution of Connecticut, as applied to him, violates the First Amendment and Equal Protection Clause of the Fourteenth Amendment to the United States Constitution is soun-substantial as not to need further argument.

3. Whether the appellant's claim that Article III, Section 11, Constitution of Connecticut, as applied to him, is unduly vague and overbroad so as to be in violation of the First and Fourteenth Amendments to the United States Constitution is soun-substantial as not to need further argument.

INDEX

	Page
MOTION TO DISMISS OR AFFIRM	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
MOTION TO DISMISS	2
NATURE OF THE PROCEEDINGS	2
ARGUMENT	
I. THIS APPEAL WAS NOT FILED WITHIN NINETY DAYS OF THE FINAL JUDGMENT OR DECREE OF THE CONNECTICUT SUPREME COURT	4
MOTION TO AFFIRM	6
ARGUMENT	
I. FIRST AMENDMENT AND EQUAL PROTECTION CLAIMS ARE UNSUBSTANTIAL	6
II. THE CONNECTICUT CONSTITUTIONAL PROVISION IS CLEARLY NEITHER VAGUE NOR OVERBOARD	8
CONCLUSION	10

CASES CITED

	Page
Barr v. *First Taxing District*, 147 Conn. 221, 158 A.2d 740 (1960)	5
Broadrick v. *Oklahoma*, 413 U.S. 601 (1973)	6,7,8,9
Clark v. *Williard*, 292 U.S. 112 (1934)	5
Cohen v. *Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949)	4
Cole v. *Violette*, 319 U.S. 581 (1943)	4
Cox Broadcasting Corp. v. *Cohen*, 420 U.S. 469 (1975)	5
Department of Banking v. *Pink*, 317 U.S. 264 (1942)	4
Fashing v. *Moore*, 489 F.Supp. 471 (W.D. Tex.), *aff'd, 631 F.2d 731 (5th Cir. 1980)*	6,7
Hoblitzelle v. *Frechette*, 156 Conn. 253, 240 A.2d 864 (1968)	5
Husted v. *Mead*, 58 Conn. 55, 19 A. 233 (1889)	5
Magill v. *Lynch*, 560 F.2d 22 (1st Cir. 1977), *cert. denied*, 434 U.S. 1063 (1978)	6
Morial v. *Judiciary Commission*, 565 F.2d 295 (5th Cir. 1977), *cert. denied*, 435 U.S. 1013 (1978)	6
State v. *Huber*, 129 W. Va. 198, 40 S.E.2d 11 (1946)	9
Taylor v. *Beckham*, 178 U.S. 548 (1899)	7

Page

United Public Workers v. *Mitchell*, 330 U.S. 75 (1947) 7

United States Civil Service Commission v. *National Association of Letter Carriers*, 413 U.S. 548 (1973) 6,7,8,9

STATUTES AND RULES CITED

United States Code

28 U.S.C. § 1257 4

28 U.S.C. § 2101 2

28 U.S.C. § 2104 2

Connecticut General Statutes

Sec. 5-198 *(1)* 7

Sec. 5-266 a(b) 7

Sec. 52-235 2,5

Sec. 52-406 2

Rules of the Supreme Court of the United States

Rule 11(3) 2

No. 81-503

In The

Supreme Court of the United States

OCTOBER TERM, 1981

IRVING STOLBERG,
Appellant,

V.

LAWRENCE DAVIDSON, et al.
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF CONNECTICUT

MOTION TO DISMISS OR AFFIRM

The appellees in the above-entitled case respectfully move the Court to dismiss and/or affirm on the grounds that this appeal has not been taken in time and/or that the questions presented are so unsubstantial as not to need further argument.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III, Section 11 of the Constitution of Connecticut and the First and Fourteenth Amendments to the United States Constitution are the focus of this appeal; these provisions are set out in pertinent part at pp. 2-3 of the Jurisdictional Statement.

Sections 5-198 (*l*), 5-266a(b) and 52-235 are cited in this motion and are set out in Appendix A; Section 52-406 is set out in Appellant's Appendix I.

MOTION TO DISMISS

The appellees respectfully move the Court to dismiss this appeal on the ground that the appeal is not within the jurisdiction of the Court because it was not filed within ninety days of the final judgment of the Supreme Court of Connecticut as mandated by 28 U.S.C. §§ 2101 and 2104 and Rule 11(3).

NATURE OF THE PROCEEDINGS

This action was commenced in the Superior Court, New Haven County on November 28, 1977, as an agreed case pursuant to Conn. Gen. Stat. § 52-406, as amended. (Appellant's Appendix I). Because the action contained issues involving both the federal and state constitutions, the Superior Court reserved, by agreement of the parties and on a stipulation of facts, all questions raised by the case to the Connecticut Supreme Court, the state's highest court, for advice in accordance with Conn. Gen. Stat. § 52-235, as amended. (Appendix, p. 2a). The factual foundation of this case has been set forth accurately by the appellant in his jurisdictional statement and need not be repeated here.

On August 8, 1978, the Connecticut Supreme Court rendered its decision by answering all questions presented first by the

agreed case and later by the reservation. 175 Conn. at 591-592 n. 1, 613. (Appellant's Appendix A, pp. A-4 - A-5, A-23). On June 8, 1981, the Superior Court formally entered judgment in accordance with the Supreme Court decision. (Appellant's Appendix B, p. B-5). On June 17, 1981, the appellant initiated his appeal to this Court under 28 U.S.C. § 1257(2).

ARGUMENT

I.

THIS APPEAL WAS NOT FILED WITHIN NINETY DAYS OF THE FINAL JUDGMENT OR DECREE OF THE CONNECTICUT SUPREME COURT

The question of finality of a judgment for purposes of this Court's jurisdiction under 28 U.S.C. § 1257 is a federal question, and this Court is not controlled by the designation applied to the judgment in state practice. *Cole* v. *Violette*, 319 U.S. 581, 582 (1943).

> For the purpose of the finality which is prerequisite to a review in this Court, the test is not whether under local rules of practice the judgment is denominated final [citations omitted] but rather whether the record shows that the order of the appellate court has in fact fully adjudicated rights and that adjudication is not subject to further review by a state court [citations omitted]. While the order or judgment is final in this sense, the time for applying to this court runs from the date of the appellate court's order, since the object of the statute is to limit the applicant's time to three months from the date when finality of the judgment for purposes of review is established.

Department of Banking v. *Pink*, 317 U.S. 264, 268 (1942). Even if the decree of the lower court on remand is considered "final" under state practice, this Court will treat, for purposes of its own jurisdiction, the action of the appellate court as final in a case in which the lower court performs only a ministerial function in entering judgment in accord with the decision of the appellate court. *Cole* v. *Violette*, 319 U.S. at 582. This is because this Court gives the requirement of finality a "practical rather than a technical construction." *Cohen* v. *Beneficial Industrial*

Loan Corp., 337 U.S. 541, 546 (1949). *See also Cox Broadcasting Corp.* v. *Cohen*, 420 U.S. 469, 478 (1975).

Under Connecticut practice, the decision of the Connecticut Supreme Court has been for many years by statute (now Conn. Gen. Stat. § 52-235, as amended) (Appendix, p. 2a) "final and decisive as to the matter reserved and the court below is required to render judgment in accordance with the advice given." *Husted* v. *Mead*, 58 Conn. 55, 66, 19 A. 233, 235 (1889). *See also Hoblitzelle* v. *Frechette*, 156 Conn. 253, 267, 240 A.2d 864, 870 (1968); *Barr* v. *First Taxing District*, 147 Conn. 221, 222-223, 158 A.2d 740, 741 (1960). In this instance, an examination of the entire record[1] reveals that every issue raised by the agreed case, whether or not made part of this appeal, was definitively disposed of by the Connecticut Supreme Court. (Appellant's Appendix A, pp. A-18 - A-22). Nothing was left for the Superior Court but to make the decision of the Supreme Court into a judgment; it had absolutely no issues upon which to exercise any discretion.

Thus, the Connecticut Supreme Court decision fully adjudicated all relevant issues so that its 1978 decision constituted a final judgment under 28 U.S.C. § 1257 and the period for appeal to this Court expired on November 7, 1978, ninety days from the date of that decision.

---

[1] In determining finality, the entire record of the case must be considered. *Clark* v. *Williard*, 292 U.S. 112, 118 (1934).

MOTION TO AFFIRM

Alternatively, the appellees move to affirm the decision of the Connecticut Supreme Court and resultant Superior Court judgment on the ground that this appeal presents no substantial questions not previously covered by decisions of this Court.

ARGUMENT

I.

FIRST AMENDMENT AND EQUAL PROTECTION CLAIMS ARE UNSUBSTANTIAL

In his jurisdiction statement, the appellant asserts that the so-called "Right to Serve" restriction is one of a group of limitations which is separately "subject to increasing scrutiny." (Jurisdictional Statement, p. 7). However, his jurisdictional statement cites no case involving the "Right to Serve." Some cases which he does cite deal with prohibition against public employees and officers running for public office, *i.e.*, the "Right to Run." *See Magill* v. *Lynch*, 560 F.2d 22 (1st Cir. 1977), *cert denied*, 434 U.S. 1063 (1978); *Morial* v. *Judiciary Commission*, 565 F.2d 295, 300-301 (5th Cir. 1977), *cert. denied*, 435 U.S. 1013 (1978); *Fashing* v. *Moore*, 489 F. Supp. 471 (W.D. Tex., *aff'd*, 631 F.2d 731 (5th Cir. 1980). (Jurisdictional Statement, pp. 7-8). Nor does the appellant even allude to the most germane cases in the area, *United States Civil Service Commission* v. *National Association of Letter Carriers*, 413 U.S. 548 (1973) and *Broadrick* v. *Oklahoma*, 413 U.S. 601 (1973). These cases upheld the Federal Hatch Act and Oklahoma's version of same, both of which prevented governmental employees in the federal and state spheres, respectively, from engaging virtually in the gamut of partisan political activities and are the controlling forces of ensuing litigation of this specific nature. *See Morial* v. *Judiciary Commission*, 565 F.2d at 299-300; *Magill* v. *Lynch*, 560 F.2d at 25-26. While the appellant discourses at length on constitutional generalities, he never comes to grip with these two cases.

In *Letter Carriers,* which reaffirmed "Unhesitatingly" the original Hatch Act decision, *United Public Workers* v. *Mitchell,* 330 U.S. 75 (1947), this Court held unequivocally that "neither the First Amendment nor any other provision of the Constitution invalidates a law barring this kind of partisan political conduct by federal employees." *United States Civil Service Commission* v. *National Association of Letter Carriers,* 413 U.S. at 536. In addition to applying *Letter Carriers* to state employees covered by similar state legislation, this Court in *Broadrick* summarily dismissed any notion that the Equal Protection Clause would be violated by a state statute which applied only to classified state employees. *Broadrick* v. *Oklahoma,* 413 U.S. at 606. The appellant's political situation, on the other hand, was considerably more favorable than those affected governmental employees in *Letter Carriers* and *Broadrick*. As a member of the faculty at a state college prior to his taking office, he was not a member of the State's classified service. Conn. Gen. Stat. § 5-198(*l*), as amended, (Appendix, p. 1a). He was thus barred from running for state office as are members of the classified service even to this day. Conn. Gen. Stat. § 5-266a(b), as amended. (Appendix, pp. 1a - 2a). *See also Broadrick* v. *Oklahoma,* 413 U.S. at 604, n. 2. He was always free to engage in partisan political activities. The contested state constitutional provision, known as "the dual job ban," merely prohibited the plaintiff from holding a position either in the executive or judicial branches of government once he took the oath of office as a state representative. In *Fashing* v. *Moore, supra,* cited by the appellant, the District Court observed that the state statute which required certain officeholders to resign before running for other offices "does not constitute prohibition against dual officeholding, which would be a proper exercise of the state's power." 489 F.Supp. at 475.

Finally, the Connecticut Supreme Court assumed "without deciding" that the plaintiff has a First Amendment right to hold office in the Connecticut General Assembly. 175 Conn. at 608, 611 (Appellant's Appendix A, pp. A-19, A-21). Neither this Court nor the Connecticut Supreme Court has gleaned such a right from the first amendment nor any other constitutional

provision. *See, e.g., Taylor* v. *Beckham*, 178 U.S. 548, 577 (1899). And so the appellees submit that if state statutes prohibiting state employees from the most basic partisan political activities involving expression and association such as campaigning and organizing political parties pass constitutional muster, then there can be no substantial constitutional question about a provision which, at the culmination of the partisan political process, requires a successful partisan political candidate as the appellant to give up a position in the executive branch of government as he assumes office in the legislative branch of government.

II.

THE CONNECTICUT CONSTITUTIONAL PROVISION IS CLEARLY NEITHER VAGUE NOR OVERBROAD

This appeal presents no substantial question on either the issues of vagueness or of overbreadth; in fact, the appellant's jurisdictional statement does not address the former. Suffice it to state that the state constitutional provision prohibiting employment in more than one branch of state government is simple and straightforward or, as the Connecticut Supreme Court stated, "plain in its direction." 175 Conn. at 611 (Appellant's Appendix A, p. A-21). This Court has recognized that any imaginative appellant can find some fault with the wording of a statute because all words do contain some small measures of uncertainty. *See United States Civil Service Commission* v. *National Association of Letter Carriers*, 413 U.S. at 579-580; *Broadrick* v. *Oklahoma*, 413 U.S. at 608. Yet the provision in question is hardly "so vague that 'men of common intelligence must necessarily guess at its meaning.' *Connally* v. *General Construction Co.*, 269 U.S. 385, 391 (1926)." *Broadrick* v.*Oklahoma*, 413 U.S. at 607.

The appellant's search for ambiguities in this matter is countered by the language of the West Virginia Supreme Court in a similar constitutional dual job ban to be "plain," "simple," "understandable" with "its meaning clear": "We do not subscribe to the theory, advanced in some quarters that:

'The notion that because the words are plain, its meaning is also plain, is merely pernicious oversimplification.'" *State* v. *Huber*, 129 W. Va. 198, 210-211, 40 S.E.2d 11, 19 (1946).

In his jurisdictional statement, the appellant does deal specifically with his overbreadth claim in light of his unsubstantiated contention of a First Amendment right to hold office. Assuming *arguendo*, as did the Connecticut Supreme Court, the existence of such a right, there is obviously no merit to the appellant's position.

The appellant's claim, as discerned from his jurisdictional statement, is that the subject prohibition is unduly harsh because any wrongdoing by a dual position holder can be dealt with in after-the-fact fashion by criminal process or by the State Ethics Commission. (Jurisdictional Statement, p. 15). The Connecticut Supreme Court dispatched this argument in one short paragraph on the basis of *Letter Carriers*. 175 Conn. at 612. (Appellant's Appendix A, p. A-22). The Court held that the claim of overbreadth based upon the theory of the availability of less drastic means to achieve the same end cannot prevail "when the clear purpose of the prohibition is to avoid even the appearance of impropriety." *Id.* Punishing offenders after the injury to society has been inflicted (assuming, of course, that imposition of punishment constitutes in fact "less drastic means") is an unsatisfactory method of safeguarding the fundamental governmental principle of separation of powers and the prevention of conflicts of interest and self-aggrandizement of our officers and employees. It is imperative to public confidence in our governmental institutions that these persons not even be placed in positions in which such conflicts may occur. *See United States Civil Service Commission* v. *National Association of Letter Carriers*, 413 U.S. at 565-566.

Application of the overbreadth doctrine "has been employed by the Court sparingly and only as a last resort." *Broadrick* v. *Oklahoma*, 413 U.S. at 613. The appeal presents no substantial cause for the Court to consider utilizing the doctrine in this case.

CONCLUSION

Contrary to the appellant's assertion, the case law in this area is neither "confusing" nor "in conflict." (Jurisdictional Statment, p. 16). It is governed clearly by principles set forth in *Letter Carriers* and *Broadrick*, which dictate an affirmance in this appeal. The appellees pray that if their motion to dismiss is not granted, then this Court grant their motion to affirm.

Respectfully submitted,

CARL R. AJELLO
Attorney General

BERNARD F. McGOVERN, JR.
Assistant Attorney General

30 Trinity Street
Hartford, Connecticut 06115
(203) 566-4990

Attorneys for the Appelles

No. 81-503

In The

Supreme Court of the United States

OCTOBER TERM, 1981

IRVING STOLBERG,
Appellant,

V.

LAWRENCE DAVIDSON, et al.
Appellees.

APPENDIX

Sections 5-198(*l*), 5-266a(b) and 52-235 of the connecticut General Statutes;

Sec. 5-198. Positions exempt from classified service. The offices and positions filled by the following-described incumbents shall be exempt from the classified service:

***

(*l*) All members of the professional and technical staffs of the constituent units of the state system of higher education as defined in section 10-322a, of all other state institutions of learning, of the board of higher education, and of the agricultural experiment station at New Haven, professional employees of the state board of education and teachers certified by the state board of education and employed in teaching positions at state institutions;

***

Sec. 5-266a. Political activities of classified state employees. Leave of absence to accept elective office.

(b) A person employed in said classified service retains the right to vote as he chooses and to express his opinions on political subjects and candidates and shall be free to participate actively in political management and campaigns. Such activity may include but shall not be limited to, membership and holding of office in a political party, organization or club, campaigning for a candidate in a partisan election by making speeches, writing on behalf of the candidate or soliciting votes in support of or in opposition to a candidate and making contributions of time and money to political parties, committees or other agencies engaged in political action, except that no classified employee shall engage in such activity while on duty or within any period of time during which such employee is expected to perform services for which he receives compensation from the state, and no such employee shall utilize state funds, supplies, vehicles, or facilities to secure support for or oppose any candidate, party, or issue in

a political partisan election. Notwithstanding the provisions of this subsection, any person employed in the classified state service may be a candidate for a municipal office only, in any political partisan election except where prohibited by local charter or ordinance. No person seeking or holding municipal office in accordance with the provisions of this subsection shall engage in political activity or in the performance of the duties of such office while on state duty or within any period of time during which such person is expected to perform services for which such person receives compensation from the state. The state ethics commission shall establish by regulation definitions of conflict of interest which shall preclude persons in the classified state service from holding elective office.

***

Sec. 52-235. Reservation of questions of law. Questions of law may be reserved for the advice of the supreme court in all cases in which an appeal could lawfully have been taken to said court had judgment been rendered therein; but no such questions shall be reserved without the consent of all parties to the record. The court or judge making such reservation shall, in the judgment, decree or decision made or rendered in such cases, conform to the advice of the supreme court.